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COMMITTEE**

**Effective consular protection in third countries: the contribution of the European Union**

**Action Plan 2007-2009**

**IMPACT ASSESSMENT**

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## Impact assessment

**Lead DG: Justice, Freedom and Security**

### **1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES**

Article 20 of the Treaty establishing the European Community ("Article 20 EC") entitles Union citizens located in a third country in which their Member State is not represented to protection by the diplomatic and consular authorities of any Member State represented, under the same conditions as the nationals of that State. It requires Member States to establish the necessary rules among themselves to secure this protection. The same right is enshrined in Article 46 of the Charter of Fundamental Rights of the European Union. This impact assessment examines policy options for rendering this right more effective.

Diplomatic and consular protection of Union citizens in third countries is one of the strategic policy objectives for the Commission in 2007 which states:<sup>1</sup> " Given the increasing number of EU citizens travelling abroad and therefore likely to resort to diplomatic or consular protection in case of a problem, the low level of information on their rights is not acceptable."<sup>2</sup>

This report is based on consultations with Member States and other stakeholders. The Commission launched a wide public consultation on 28 November 2006 with the publication of a Green Paper on diplomatic and consular protection of Union citizens in third countries<sup>3</sup> which proposed a number of possible actions with a view to enhancing the protection of Union citizens in distress in third countries. The Commission received 50 replies to the Green Paper from a wide range of stakeholders<sup>4</sup> (**Annex 1**). Civil society, other European institutions and individuals considered it essential to give impetus to Article 20 EC as a tangible expression of Union citizenship which needs to be developed. Several Member States called for caution and recalled that they have the primary responsibility for ensuring diplomatic and consular protection to their nationals. The European Economic and Social Committee has given its opinion on the Green Paper.<sup>5</sup> The opinion of the European Parliament is expected in December 2007. A summary report of the public hearing which took place on 29 May 2007 is attached (**Annex 2**).<sup>6</sup>

This impact assessment has been prepared on the basis of an external study ordered by the Commission. The problem, objectives and policy options have been assessed on the basis of a report prepared by the contractor in close consultation

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<sup>1</sup> CLWP reference No: 2007/JLS/014

<sup>2</sup> [http://ec.europa.eu/atwork/programmes/index\\_en.htm](http://ec.europa.eu/atwork/programmes/index_en.htm)

<sup>3</sup> COM(2006) 712.

<sup>4</sup> The replies to the Green Paper are available at the following web-site:

[http://ec.europa.eu/justice\\_home/news/consulting\\_public/news\\_consulting\\_public\\_en.htm](http://ec.europa.eu/justice_home/news/consulting_public/news_consulting_public_en.htm)

<sup>5</sup> EESC opinion: SOC/262 (CESE 425/2007).

<sup>6</sup> A summary report of the public hearing is available at the following web-site:

[http://ec.europa.eu/justice\\_home/news/consulting\\_public/news\\_consulting\\_public\\_en.htm](http://ec.europa.eu/justice_home/news/consulting_public/news_consulting_public_en.htm)

with the Commission. Questionnaires were circulated to 27 Member States, consulates in third countries, NGOs and national associations of travel agents and tour operators. Replies were received from 16 Member States,<sup>7</sup> (2 consulates, 1 NGO and four national associations of travel agents and tour operators. The Commission sent a letter to the members of the Council working group on consular affairs ("the COCON group") asking them to make their best efforts to submit their replies by the end of August 2007 to enable the Commission to present its initiative on the basis of correct and reliable data. Meetings of an inter-service steering group took place on 27 June and 25 July 2007 in which representatives of the Secretariat-General, DG JLS, DG RELEX, DG RTD and DG COMM participated.

The Impact Assessment Board issued its opinion on the draft Impact Assessment report on 7 September 2007. Following this opinion, the report was substantially redrafted, in particular to better demonstrate the actual magnitude of the problem (point 2.1). It explains the reasons for the absence of an exact number of individual cases and gives real-life examples reported during the public consultation. The section on problem definition was reinforced to clearly distinguish between legal issues and other issues (point 2.2). The analysis of the necessity and added value of EU action was revised (point 2.8) and a more detailed analysis of the necessity and added value has been inserted for each of the proposed actions in the preferred option (points 5.2 and 5.3). Finally, the report was substantially amended to provide an estimate of the cumulative costs for all actions selected in the preferred option (points 5.2 and 5.3). Following the second opinion of the Impact Assessment Board of 28 September 2007, the report was amended as regards the size of the problem (point 2.3) and the monitoring and evaluation (point 7).

## **2. PROBLEM DEFINITION**

### **2.1. Background**

The principle of solidarity enshrined in Article 20 EC is an essential element of Union citizenship ensuring all Union citizens to protection in a third country where their own Member State is not represented.

The 27 Member States already apply high standards of protection. Nevertheless, more can be done to render Union citizens' fundamental right to consular and diplomatic protection in third countries even more effective. The intention is not to encroach upon the Member States' competence in this field, but on the contrary, to assist the Member States through a series of actions which have a true added value. Consular protection is a task for the national Ministries of Foreign Affairs. Member States' diplomatic and consular representations are currently limited in many third countries.

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<sup>7</sup> Austria, Bulgaria, Denmark, Estonia, Finland, Germany, Greece, Hungary, Lithuania, Malta, Netherlands, Poland, Portugal, United Kingdom, Slovenia and Slovakia.

To date, all 27 Member States are represented in only three of the 166 third countries: the People's Republic of China, the Russian Federation and the United States of America.<sup>8</sup> There are 18 countries in which no Member State is represented, 17 countries in which only one Member State is represented and 11 countries in which two Member States are represented. This includes a number of popular tourist destinations for Union citizens (e.g. the Bahamas, Barbados, Madagascar, the Maldives and the Seychelles). The Member States' diplomatic and consular representations are especially limited in Central America and the Caribbean<sup>9</sup>, Central Asia<sup>10</sup> and Central and West Africa<sup>11</sup>.

Based on the 2006 list of the Secretariat General of consular offices in the world, there are currently 1,436 Member States' consular representations in third countries. The country with the highest number of representations is France with 132 followed by Germany with 122 and the UK with 115. The countries with the lowest number of representations outside the EU are Estonia, Latvia (both 9), Malta (8) and Luxembourg (7) (**Annex 4**).

According to the questionnaires submitted by Member States, the most common problems encountered by citizens travelling to third countries are loss of passport, accidents, theft, death, loss of financial resources, crime, sudden sickness and detention. EU citizens working and living in third states are usually more accustomed to the dangers of their host country and do not carry documents and large sums of money around, so loss and theft of passports or money is less common. Nevertheless, assistance is needed in the case of accidents and serious illness or for "day-to-day" services such as renewing passports or requesting birth certificates.

The fees for the different consular protection services vary between Member States. Some Member States, e.g. the U.K., base the fees on the costs of providing the consular assistance. Other Member States offset some of the costs and charge less than the full costs to the beneficiaries of consular protection. As a result, the costs vary between Member States' consulates. Obtaining an emergency passport from a Finnish consulate costs €135. The equivalent cost is €108 for Sweden, €100 for Ireland and €30 for Denmark. A certificate for the transport of corpses or ashes issued by the French authorities costs between € 25-40. The same certificate issued by the Italian consulates costs €30, €20 if issued by German consulates and €60 if issued by Dutch consulates. The consular fee for a death registration and certification is €143 for British consulates and €10 for Czech consulates. The most striking example is the cost of an emergency travel document provided by an Italian consulate which is free for Italians whilst the same document for other EU citizens costs €30.

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<sup>8</sup> Council document 16838/1/06 of 23 March 2007 on Presidency diplomatic representation in third countries, not published.

<sup>9</sup> No Member State is represented in the Bahamas, 1 Member State is represented in Belize, 3 in Haiti, 4 in El Salvador and 6 in the Dominican Republic.

<sup>10</sup> 3 Member States are represented in Tajikistan and Turkmenistan. One Member State is represented in Kirghistan.

<sup>11</sup> One Member State is represented in Liberia and Sao Tome and 3 in Congo-Brazzaville.

## 2.2. The scope of the problem

It is estimated that 8,7% of the EU citizens travelling outside the EU travel to third countries where their Member States are not represented. Based on the number of trips made annually by EU citizens, it is estimated that the number of "unrepresented" EU nationals travelling to third countries each year is around 7 million. It is estimated that around 2 million EU expatriates live in a third country where their Member State is not represented (see below section 2.8). These numbers are likely to grow. The public consultation showed certain shortcomings under the current situation.

First, the majority of citizens are not aware of the existence and contents of Article 20 EC. A Eurobarometer survey carried out in 2006 showed that only 23% of the citizens were aware of this right.<sup>12</sup> The situation is made worse by the fact that there is no easy access to a complete and up-to-date list of the contact details of other Member States' representations in third countries.<sup>13</sup> The information provided on the web-sites of the Ministries of Foreign Affairs is not always sufficiently detailed in this respect. Although several web-sites inform citizens of their right to protection by other Member States, there is generally no specific reminder of this right as regards the third countries where the Member State is not represented. Instead, citizens are often advised to contact the Member States' nearest consulate in another third country.<sup>14</sup>

Second, the legal framework around Article 20 EC needs to be clarified. The scope and legal force of consular protection vary from one Member State to another depending on the respective national rules. One concrete example invoked during the public consultation was the difficulties in establishing the eligibility of some of the non European family members of Union citizens during the evacuation from Lebanon in 2006. Another example is the inconsistent assistance given to Union citizens who are held in immigration detention in Thailand due to the expiry of their visa or because their passport and travel document have been stolen. It appears that some Member States would provide new identity documents and financial advances within a few weeks whereas it can take up to 6 months to obtain these documents from other Member States. The existing acquis, Decision 95/553/EC, is non-exhaustive and does not explicitly cover important aspects, such as the repatriation of mortal remains or the assistance to Union citizens' family members who are third country nationals.

Another legal element that needs clarification is the consent of third country authorities. The consultations with the Member States show that the majority of them obtain the consent of third country authorities to protect citizens of another State through a unilateral notification. However, the absence of explicit consent of

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<sup>12</sup> Eurobarometer No 188 of July 2006.

<sup>13</sup> The list of Member States' representations in Council document 16838/1/06 of 23 March 2007 on Presidency diplomatic representation in third countries is not published and does not contain the contact details of the representations.

<sup>14</sup> See e.g. the web-sites of the Ministries of Foreign Affairs of Belgium, Sweden and Spain.

third countries does not ensure legal certainty and transparency for the citizens since it does not prevent third countries from unilaterally changing their mind.

Third, there is a need to compensate for Member States' limited consular presence in third countries by favouring the pooling of resources, burden-sharing and exchange of best practices. It emerged from the public consultation that Member States already cooperate in third countries, but that more can be done in this respect to increase coverage in third countries and thereby ensure protection to Union citizens.

It is difficult to provide exact numbers on the number of individual cases concerned since most Member States do not keep such records. However, the following estimates can be made on the basis of the replies given by 11 Member States.<sup>15</sup> It is estimated that around 0,53%<sup>16</sup> of EU citizens who travel to third countries need consular assistance,<sup>17</sup> which would amount to approximately 425.0000 requests for consular services by EU citizens per year in third countries.<sup>18</sup> It is estimated that at least 37.000 of these cases come from Union citizens whose Member States are not represented in the third country.<sup>19</sup> The U.K. reported 1.815 cases of assistance to unrepresented Union citizens in 2003-2004 and 484 cases in 2005-2006. This relatively low number might be due to the limited knowledge by citizens. Citizens cannot invoke their rights under Article 20 EC unless they know that they have such a right.

The Commission has been informed of a limited number of cases where Member States have allegedly not fulfilled their obligations under Article 20 EC, e.g. by failing to issue an emergency travel document to an unrepresented Union citizen in a third country. To date, the Commission has not received any formal complaint from citizens about alleged violations of Article 20 EC. Previous experience, e.g. in the field of passenger rights, has shown that information campaigns may lead to an increase in the number of complaints.

It is necessary to act now since the demand for consular protection will almost certainly increase in the future as Union citizens become more aware of their rights under Article 20 EC and as a result of the increase in travelling to third countries.

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<sup>15</sup> Austria, Bulgaria, Denmark, Estonia, Hungary, Lithuania, Netherlands, Poland, United Kingdom, Slovenia and Slovakia. The data provided by Malta, Finland, Greece, Germany and Portugal were not included as they were not sufficiently precise.

<sup>16</sup> The data on the frequency of problems encountered by citizens in third countries (provided by 11 Member States) has been used to estimate the weighted average of EU citizens that require consular assistance while travelling to third countries (total number of cases of consular assistance in 11 Member States divided by the number of trips made by the citizens of these Member States).

<sup>17</sup> This average does not take into account the number of EU expatriates living in third countries as the numbers found are not very reliable (citizens are not obliged to register when moving to live abroad).

<sup>18</sup> This has been calculated multiplying the total number of trips made by EU citizens outside the Union (80,330,063) by the proportion of citizens needing consular assistance while travelling outside the EU (0.53%).

<sup>19</sup> The same share of EU citizens that require consular assistance while travelling to third countries (0.53%) has been applied to the number of unrepresented EU citizens travelling abroad

Natural disasters, terrorism attacks and political instability are other reasons for concern.

The aim of the Action Plan is to propose actions aiming to give substance to Article 20 EC and to address present and foreseeable shortcomings in this area.

There are four specific issues that require action at EU level.

### **2.3. Poor awareness of EU citizens about their right to diplomatic and consular protection in third countries**

A Eurobarometer survey showed an overall lack of awareness by EU citizens of the right to consular protection stipulated in Article 20 EC. In 2006, only 23% of EU citizens were aware that in case of an urgent need for help (for example, in case of loss of a passport, arrest, or natural disaster) in a third country where their own country has no embassy or consulate, they have a right, under Article 20 EC, to receive the protection of a diplomatic or consular authority of any other EU Member State.<sup>20</sup> The most widely held perception was that in such cases people must contact their own Ministry of Foreign Affairs (34%). People were equally divided about the remaining options; with 16% believing that they had to use the services of a travel agent while 17% thought that they had to use the assistance from the Commission delegation in that country for administrative issues in case of emergency.

This lack of awareness of the right to diplomatic and consular protection is a potential cause of serious stress, distress and additional costs for EU citizens.

### **2.4. Unclear scope of protection under Article 20 EC**

#### *Differences under national legislation<sup>21</sup>*

Article 20 EC requires each Member State to protect "unrepresented" Union citizens on the same conditions as those granted to its own nationals. Consequently, EU citizens are potentially faced with 27 different legal and practical arrangements for consular protection. The scope and legal force of consular protection vary between Member States (**Annex 3 table 3**).

Out of the sixteen Member States that replied to the questionnaire, six Member States recognise the right to consular assistance under national law (Austria, Denmark, Estonia, Finland, Lithuania, Portugal and Slovenia), three Member States under international law and bilateral consular conventions (Bulgaria, the Netherlands and Greece) while two Member States have this right inscribed in their national constitution (Poland and Slovakia). Certain Member States do not confer a right to consular protection under national law.

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<sup>20</sup> Eurobarometer No 188 of July 2006

<sup>21</sup> This data is based on the replies to the questionnaire to which 12 Member States replied.

Out of the Member States that replied to the questionnaire, nine recognise the right of appeal, in different forms, in case of a refusal to provide consular protection (Estonia, Finland, Denmark, Lithuania, Poland, Portugal, Slovenia, Slovakia and the U.K.) (**Annex 3 table 4**).

Only a limited number of Member States provide protection to family members who are third country nationals. Similarly, only a few Member States provide consular protection to third-country nationals who are long term residents in that State.<sup>22</sup>

These differences may deprive Article 20 EC of its full effect.

#### *Unclear scope of Decision 95/553/EC*

Decision 95/553/EC<sup>23</sup> outlines possible action by Member States in cases such as: arrest or detention; accident or serious illness; an act of violence against a citizen; death; help for a distressed citizen or his repatriation. It also covers the procedures for financial advances to citizens in difficulty. The above list is not exhaustive. The Decision states that a citizen can also apply for protection in other circumstances, in which, in so far as it is within the State's powers, immediate assistance should be given to a national in difficulties.

The fact that Decision 95/553/EC is non-exhaustive may lead to legal uncertainty insofar as it is not clear whether it applies to matters that are not explicitly included in its scope. It is e.g. unclear whether it applies to the identification and repatriation of mortal remains. Moreover, it does not explicitly apply to Union citizens' family members who are third country nationals. Finally, the procedure foreseen for the repayment of financial advances is complex.

Moreover, Member States have transposed Decision 95/553/EC into their national legislation at different times and in different ways (e.g. through laws, circulars, Constitution). It appears that some Member States have not yet transposed Decision 95/553/EC into national legislation and that others have not published their transposition of Decision 95/553/EC (**Annex 3 table 3**).

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<sup>22</sup> Sweden and Finland extend the right to diplomatic and consular protection to third-country nationals who are long-term residents. German law states that consular officers may also render assistance to non-German members of a German citizen's family. Similarly, Italian law provides that the consular authorities may provide assistance to non-nationals. Latvian law stipulates that Latvian consular authorities may provide protection to citizens who have permanent residence permit in Latvia. Bulgaria, Estonia and the UK do not extend consular protection to family members who are not nationals, although the UK does specify that there can be exceptions if this is in the course of assisting a British national. Denmark extends its protection if family members have a valid resident permit and Lithuania does so unconditionally to spouse and children. Poland provides this assistance on a case by case basis.

<sup>23</sup> Decision 95/553/EC of the representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations (OJ L 314, 28.12.1995, p. 73) available at: [http://eurex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=41995D0553&model=guichett](http://eurex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=41995D0553&model=guichett)

## **2.5. Limited representation of Member States in third countries and lack of clear burden-sharing between Member States**

As pointed out above (point 2.1), all 27 Member States are represented in only three out of 166 third countries. The lack of representation was accentuated by the latest enlargements of the EU. The annual budget for national diplomatic and consular representations varies from country to country. Overall, resource-related problems are more acute for smaller Member States. However, bigger Member States might not have sufficient consular resources, in terms of staff and languages, to provide adequate assistance to citizens of several other Member States.

The consultation with Member States shows that burden-sharing arrangements are relatively limited for the time being.<sup>24</sup> Certain Member States use co-location arrangements and joint missions in third countries as a means to bring down costs and improve coordination.<sup>25</sup> In Dar es Salaam and Abuja, the Commission delegations share the premises with certain Member States. Each partner owns and pays its part of the building and the common costs are shared on a pro-rata basis.

The EU Member States are currently putting into place the "Lead State" framework as a form of consular cooperation in times of crisis in third countries where few Member States are represented.<sup>26</sup> One or several Member States are designated as a "Lead State" in the third country to ensure the protection of unrepresented Union citizens on behalf of the other Member States. In case of evacuation, the "Lead State" is responsible for the evacuation of all Union citizens to a safe place. Although the "Lead State" arrangement is a positive step towards a more effective burden-sharing, it is not sufficient, since it is limited to crisis management.

## **2.6. Lack of consent of third countries to secure protection under Article 20 EC**

The implementation of Article 20 EC requires the consent of the third countries to secure protection to unrepresented EU citizens by the diplomatic and consular authorities of another Member State. It is a general principle of international law that the protection of a citizen of one State by another State is subject to the third country's consent.<sup>27</sup> Article 20 EC provides that Member States shall "start the international negotiations required to secure this protection". Each Member State is therefore expected to initiate bilateral negotiations with third countries. However, it is unclear to what extent Member States have obtained the consent of third countries and, if so, by what means. The consultations with the Member States showed that the majority of the countries obtain the consent of third country authorities to protect citizens of another state through simple notification.

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<sup>24</sup> The Benelux countries apply a system of deputising in third countries on the basis of agreements.

<sup>25</sup> This is the case e.g. in Abuja, Almaty, Ashgabat, Dar es Salaam, Pyongyang, Quito, Reykjavik, Minsk and Chisinau.

<sup>26</sup> See Council conclusions of 17-18 June 2007.

<sup>27</sup> Article 45(c) and Article 46 of the Vienna Convention on Diplomatic Relations of 1961 and Article 8 of the Vienna Convention on Consular Relations of 1963 foresee the possibility for a country to exercise consular functions in the receiving State on behalf of a third State upon appropriate notification to the receiving State.

## 2.7. Other issues

It emerged during the public consultation that Article 20 EC is subject to different interpretations. Certain Member States consider that this provision applies to diplomatic as well as consular protection whereas others claim that its scope is confined to consular protection. Diplomatic protection is commonly understood as a state-to-state process by which a state may bring a claim against another state in the name of a national who has suffered an internationally wrongful act committed by the other state and the individual has exhausted all available local remedies. Conversely, consular protection or assistance is the provision of support and assistance by a state to citizens in distress in another state, either its nationals or those nationals to whom it has agreed to provide assistance. This includes e.g. assistance in case of serious accidents or illnesses, criminal charges or detention and lost travel documents. The option of reinforcing and clarifying the scope of diplomatic protection was considered, but has been left out at this stage due to a lack of data on current practices and problems in this area. It is also a politically sensitive question since several Member States claim that diplomatic protection falls outside the scope of Article 20 EC. It appears that the majority of cases in which citizens need assistance concern consular protection.

## 2.8. The size of the problem

### *Numbers of EU citizens travelling in third countries*

The statistical data as regards the number of EU citizens travelling in third countries varies. The COCON working group estimated in 2006 that EU citizens make some 180 million trips to third countries each year. This can be compared to Eurostat<sup>28</sup> which estimated the number of trips to around 80 million trips in 2005 (including trips to Romania and Bulgaria), corresponding to 30% of all foreign trips made by EU citizens. The Eurostat estimates have been used for the purpose of this report.

According to Eurostat, 66 million trips were made for leisure and 14 million for business reasons. The country generating the largest number of trips to third countries was Germany with over 24 million trips followed by the U.K. with some 12 million trips. The Member State with the highest percentage of trips outside the EU was Slovenia with 68% while the lowest was Luxembourg with 12%. The numbers and percentages of all trips for each Member State are given in **Annex 5**. The major destinations outside the EU were the U.S., Turkey and Switzerland.

The number of trips made by EU citizens to third countries has increased over the last five years and is likely to increase further. In 2005, EU residents spent more than €86.5bn outside the EU (compared to €81.2bn in 2004 and €77.3bn in 2003),

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<sup>28</sup> Database on population, section on tourism. Data include holiday and business trips of more than one day in 2005.

making them the biggest spenders in the world<sup>29</sup>. The World Tourism Organization (UNWTO) forecasts that international tourism will continue growing at an average annual rate of 4 %. With the advent of e-commerce, tourism products have become one of the most traded items on the internet. If the costs of international travel remain low in real terms, the numbers are likely to increase even more rapidly in the years ahead.

#### *Number of citizens living and working in third countries*

It is difficult to estimate the exact number of EU citizens living and working in third countries since citizens are not obliged to register when moving abroad. The association "Europeans throughout the World" (ETTW) estimates that between 30 million and 50 million EU citizens are long-term residents in non-EU countries. For 10 countries, specific figures (which are often estimates) have been accessed<sup>30</sup> (**Annex 5**). From this data, an estimate of 30 million EU citizens living abroad has been made<sup>31</sup>. The country with the biggest community living outside the EU is the U.K. with more than 11 million nationals in 2004-2005, while the country with the smallest community living in third countries is Estonia with 27,000 citizens in 2005. The number of nationals working and living in third countries increased for all countries for which data have been gathered with the exception of the UK. It is reasonable to assume that there will be a gradual increase in the number of EU citizens living abroad.

#### *The extent of 'unrepresentation' of EU citizens travelling and living in third countries*

Citizens of Germany, France and the UK, each of which has more than 100 consulates, are less likely to travel to or live in third countries where their Member State is not represented than citizens from Lithuania, Estonia, Malta and Latvia who have a high probability of travelling to countries where their Member State does not have a representation.

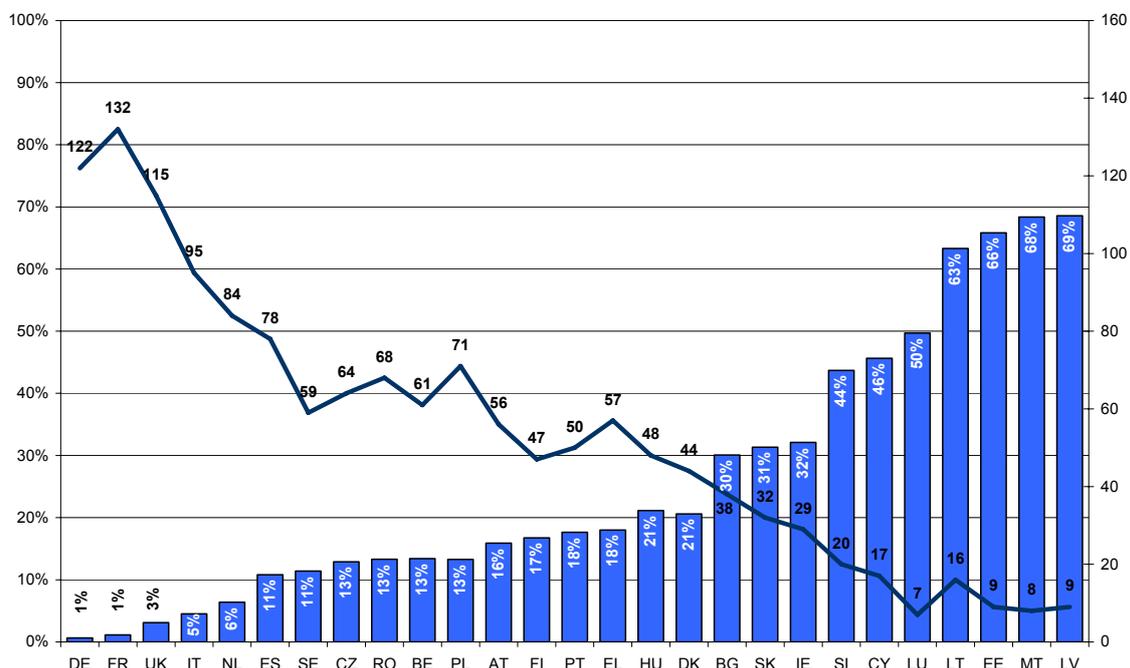
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<sup>29</sup> Eurostat,  
[http://epp.eurostat.ec.europa.eu/pls/portal/docs/PAGE/PGP\\_DS\\_TOURISM/PGE\\_DS\\_TOURISM\\_01/TAB66450742/KS-SF-07-085-EN.PDF](http://epp.eurostat.ec.europa.eu/pls/portal/docs/PAGE/PGP_DS_TOURISM/PGE_DS_TOURISM_01/TAB66450742/KS-SF-07-085-EN.PDF)

<sup>30</sup> From consultation and background research

<sup>31</sup> This is a weighted average (total number of citizens living outside the EU for ten Member States divided by the number of population in this ten Member States and multiplied by total population of the EU). From Eurostat data.

Figure 1 – degree of ‘unrepresentation’ for each Member State <sup>32</sup>



It is estimated that 8,7% of EU citizens travelling outside the EU travel to countries where their Member States are not represented. If this proportion is applied to the number of trips made annually by the citizens of the EU (80,330,063), then the number of unrepresented EU citizens travelling to third countries each year is around 7 million.

It is estimated that around 2 million EU citizens are living in a third country where their Member States are not represented<sup>33</sup>. On average, between 5,7% (assuming that there are 40 million EU citizens living outside the EU) and 7,3% (assuming that there are 30 million EU citizens living outside the EU) of the EU population living in a third country does not have a representation.

<sup>32</sup> The line and the right hand axis of Figure 1 shows the number of consulates of each Member State in third countries. The bars on the left hand axis indicate an estimate of the share of national citizens that are unrepresented when travelling or living in third countries. This share is estimated on the basis of the total population of those third countries where the Member State is not represented. The assumption behind this estimate is that third countries with a relatively high population are more ‘attractive’ to EU citizens (in terms of business opportunities and tourist attractions). There are of course exceptions, such as the Caribbean, which attract high numbers of tourists and large countries which lie outside tourist / business destinations.

<sup>33</sup> The estimate has been made by applying the share of ‘unrepresentation’ (see Figure 1) to the number of citizens living in a third country available for 10 Member States. Afterwards, a weighted average has been calculated on the basis of the population of these ten countries.

## 2.9. Does the EU have the right to act?

The Member States expressed different views during the public consultation. Certain Member States welcomed increased cooperation and supported the suggestions made in the Green Paper (Estonia, Lithuania, Latvia, Luxembourg and Denmark). Other Member States questioned the need for Community action in this field (e.g. United Kingdom, France, Ireland, Austria, Portugal), arguing that diplomatic and consular protection is primarily the responsibility of the Member States and that the EU does not have a legal basis to act in this field. These reactions show that Community action in this field, which has traditionally been considered as a prerogative of the Member States, is not yet accepted by all Member States.

Article 22 of the EC Treaty allows the Commission to propose provisions to add or strengthen citizenship rights according to a burdensome procedure requiring the constitutional ratification by all Member States. The entry into force of the Reform Treaty will provide a clear legal basis for EU law in this area. The modified wording of Article 20 EC enables the Council to adopt directives "establishing cooperation and coordination measures necessary to facilitate such protection".

If Member States act alone, there is a risk that progress will be slow. As an illustration, Decision 95/553/EC took 5 years to enter into force due to the ratification procedures of the then 15 Member States. Without Community action, the problems identified would not be resolved and the policy objective of ensuring citizens' fundamental right to diplomatic and consular protection outside the EU would not be fulfilled. Community action is therefore necessary in the four areas invoked in this section.

First, Community action is necessary to effectively raise Union citizens' awareness of Article 20 EC and of its implications. Despite several information campaigns at national level and a brochure produced by the Council Secretariat, the vast majority of EU citizens remain unaware of their right to diplomatic and consular protection. Information campaigns carried out at EU level are likely to be more efficient in terms of awareness-raising. The printing of Article 20 EC in all new passports would be a simple and efficient means.

Second, it is necessary to reinforce and clarify the scope of Article 20 EC and ensure that Union citizens receive a similar level of protection. In the absence of clear rules, Union citizens cannot be sure to receive a minimum level of assistance. This would not only deprive Article 20 EC of its full effect, but it could ultimately encourage "consular shopping" and put a higher burden on Member States which offer a higher level of protection than others.

Third, to ensure the effective protection on the ground of unrepresented citizens in third countries, it is necessary to improve the current cooperation and coordination arrangements. This can be brought about by the pooling of resources and by clear burden-sharing rules. The current co-location arrangements between Member States in third countries are positive. However, these cases are still very limited. The "Lead State" concept that is currently put in place by Member States is also a

positive step towards more effective burden-sharing, but would primarily operate in crises situations in third countries where only a few Member States are represented. Article 20 EC is however not limited to crises situations, but applies also to individual assistance, such as loss of passports. Increased cooperation and more effective burden-sharing (e.g. through common offices) would be in the interest of both smaller and bigger Member States. It would be useful for Member States with limited consular representations (such as Luxembourg, Malta and the Baltic States) since it would help them to ensure the protection of their citizens. An effective burden-sharing is likewise important for Member States with a wide consular network in third countries (such as France, Germany and UK) to ensure that these countries do not carry a disproportionate burden.

Finally, Community action would be necessary to effectively ensure the consent of third countries. The inclusion of a consent clause in future "mixed" agreements concluded with third countries would effectively ensure legal certainty and transparency for the Member States as well as for the third countries and the citizens. It would prevent third countries from unilaterally changing their mind. It would finally dispense Member States of the burdensome task of unilaterally notifying each third country individually.

### **3. OBJECTIVES**

#### **3.1. General policy objectives**

There are four general policy objectives:

- (1) To increase awareness of EU citizens of their fundamental right to diplomatic and consular protection when they are outside the EU;
- (2) To reinforce and clarify the scope of consular protection of unrepresented EU citizens and their family members and to ensure that all EU citizens receive a similar level of protection;
- (3) To ensure more effective protection on the ground of unrepresented EU citizens in third countries;
- (4) To ensure the consent of third countries to secure protection under Article 20 EC.

#### **3.2. Specific and operational policy objectives**

The specific and operational objectives relating to each of the four general objectives are considered in turn below.

*General objective 1: To increase awareness of EU citizens of their fundamental right to diplomatic and consular protection when they are outside the EU*

**Specific policy objective:**

- To increase awareness of the rights under Article 20 EC among EU citizens visiting third countries in which their Member States are not represented.

**Operational policy objective:**

- To disseminate information about citizens' rights under Article 20 EC by different means (posters, passports, website etc)

***General objective 2:** To reinforce and clarify the scope of consular protection of unrepresented EU citizens and their family members and ensure that all EU citizens receive a similar level of protection*

**Specific policy objectives:**

- To reduce variations in procedures for unrepresented EU citizens receiving consular protection in third countries
- To reduce variations in the scope of consular protection for EU citizens
- To reduce emotional stress and other costs of delays and complications in identifying and repatriating the remains of EU citizens
- To minimise unnecessary distress, costs and delays to EU citizens who have been deprived of financial means
- To reduce the emotional and other costs of third country family members of EU citizens who would otherwise not receive consular protection

**Operational policy objectives:**

- To improve standards and reduce variations as regards access to consular protection, the scope of protection and financial assistance.
- To ensure consular protection for family members of EU citizens who are not EU nationals

***General objective 3:** To ensure more effective protection on the ground of unrepresented EU citizens in third countries*

**Specific policy objectives:**

- To increase the number of unrepresented EU citizens who, when in need of protection, successfully access consular services from other Member States' representations
- To improve the consular services provided to unrepresented citizens

**Operational policy objectives:**

- To provide for the exchange of best practices and training
- To set up common offices
- To ensure effective and transparent rules on burden sharing

**General objective 4:** *To ensure the consent of third countries to secure protection under Article 20 EC*

**Specific policy objectives:**

- To ensure the consent of third countries that EU citizens can be assisted by any Member State represented in their country.
- To ensure consent of third countries for the Community to exercise protection in areas of Community competence via Commission delegations.

**Operational policy objectives:**

- To increase the instances of consent of third countries by way of mixed agreements to secure protection under Article 20
- To increase the instances of consent of third countries by way of bilateral agreements to secure protection under Article 20

**4. POLICY OPTIONS**

This Section elaborates the policy options that could address the problems in the current situation and contribute to the achievement of the policy objectives. The policy options include 26 separate actions. The actions have been grouped into four policy options:

Policy Option 1: A status quo policy option involving no new actions;

Policy Option 2: An option including mainly non-legislative actions that should be relatively inexpensive, uncontroversial and straightforward to implement in the short term;

Policy Option 3: An option including all of the actions of policy option 2 plus additional non-legislative and legislative actions that would require further discussion and would entail some expenditure; and

Policy Option 4: An option including all actions of policy options 2 and 3 plus a number of additional actions that are legally and technically complex and need more examination and likely to be long term in nature.

In practice defining the policy options in this way has been iterative. The policy options are outlined in Table 4.1. The actions have been numbered and classified according to whether they: would provide information to citizens; clarify the scope of protection; influence the relevant structures of Member States; and obtain the consent of third countries. They are also grouped as to whether they are legislative or non legislative.

**Table 4.1 – Overview of Policy Options**

<b>Description of policy option</b>	
<b>Policy Option 1</b>	No changes are made to the current situation other than those that are already planned and confirmed.
<b>Policy Option 2</b>	<p><u>Legislative action:</u></p> <p><u>INFORMATION:</u></p> <ol style="list-style-type: none"> <li>1. A recommendation to Member States to print Article 20 EC in new passports and to affix a sticker on existing passports</li> </ol> <p><u>Non-legislative action:</u></p> <ol style="list-style-type: none"> <li>2. Publish guidelines and other measures connected with the implementation of Article 20 in the EU Official Journal.</li> <li>3. Set up an EU web-site on "Europa" on consular protection</li> <li>4. Put posters explaining the rights of EU citizens to consular protection in airports, ports, railway stations etc.</li> <li>5. Assess the extent and nature of discrepancies in Member States' legislations and practices in the field of consular protection</li> <li>6. Publish updated contact details of embassies and consulates of the Member States represented in each third country</li> <li>7. Explore the possibility of a coordinated presentation of travel advice</li> <li>8. Explore the need for sharing best practices and provide training for key actors</li> </ol>
<b>Policy Option 3</b>	<p><b>All measures mentioned under Policy option 2 plus:</b></p> <p><u>Legislative action:</u></p> <p><u>SCOPE:</u></p> <ol style="list-style-type: none"> <li>9. Examine the possibility of ensuring that citizens receive a similar level of protection irrespective of their nationality</li> <li>10. Ensure consular protection for the identification and repatriation of remains</li> <li>11. Simplify the procedures for repatriating remains</li> <li>12. Examine the possibility of ensuring protection to EU citizens' family members who are not EU nationals</li> <li>13. Explore the need to simplify procedures for financial advances required under Decision 95/553</li> </ol> <p><u>Non-legislative action:</u></p> <p><u>INFORMATION:</u></p> <ol style="list-style-type: none"> <li>14. Set up an EU telephone line for consular protection</li> </ol> <p><u>SCOPE:</u></p> <ol style="list-style-type: none"> <li>15. Recommend to Member States, which have not yet ratified the 1973 Council of Europe Convention on transfer of corpses, to accede to it</li> </ol>

Description of policy option	
<b>Policy Option 3</b>	<p><u>STRUCTURES:</u></p> <p>16. Examine the possibility of setting up a compensation system between Member States</p> <p>17. Set up a "common office" in one area as a pilot project to be evaluated.</p> <p>18. Publish arrangements on burden-sharing between Member States in third countries (guidelines, the idea of "lead State" etc).</p> <p><u>CONSENT:</u></p> <p>19. Insert a "consent clause" in "mixed" agreements concluded with third countries and recommend Member States to insert "consent clauses" in their bilateral agreements concluded with third countries.</p> <p>20. Consider the possibility of obtaining the consent of third countries to allow the Union to exercise protection through the Commission delegations in cases falling under Community competence.</p>
<b>Policy Option 4</b>	<p><b>All measures mentioned under Policy options 2 and 3 plus:</b></p> <p><u>Legislative action:</u></p> <p><u>SCOPE:</u></p> <p>21. Ensure consular protection to third country nationals who are long-term residents in another Member State of the EU</p> <p><u>STRUCTURES:</u></p> <p>22. Set up "common offices" in four areas (the Caribbean, the Balkans, the Indian Ocean and West Africa)</p> <p>23. Allow "common offices" to perform consular functions, such as issuing visas or legalising documents</p> <p>24. Establish a "European Consular Code" to define the burden-sharing between Member States</p> <p><u>Non-legislative action:</u></p> <p>25. Create an EU Consular Academy</p> <p>26. Encourage research and development for the identification of remains</p>

## 5. ASSESSMENT OF THE IMPACTS OF POLICY OPTIONS

Each of the policy options and their component actions has been assessed against the following criteria.

- The impact with respect to the four general policy objectives – i.e. how far does the action pursue each objective?
- To what extent are relevant fundamental rights ensured and promoted? The following rights of the Charter of Fundamental Rights are relevant: the right to diplomatic and consular protection (Art. 46), right to human dignity (Art. 1), the right to respect for private and family life (Art. 7).
- What are the main costs linked to the implementation of the action? and
- Who will bear these costs?

The views expressed by Member States and other stakeholders have also been taken into account.

For each action, the anticipated impact has been assessed on an 'intuitive' scale of positive impact from one to five (five being the best score) with respect to the four policy objectives.

The policy options are a combination of actions. Most of the actions are complementary rather than alternative means to achieve the same ends. In these circumstances it is necessary to consider each action individually.

### **5.1. Policy Option 1 – Status quo**

No changes are made to the current situation, i.e. the following EU level measures (legislative instruments) are maintained:

- Article 20 EC and Article 46 of the Charter of Fundamental Rights.
- Decision 95/553/EC
- The Guidelines on consular protection

The status quo provides important rights. However in the absence of action to ensure that citizens are aware of their rights and that Member States provide for them, Article 20 EC might be deprived of its full effect and the policy objectives would not be fulfilled.

### **5.2. Policy Option 2**

This policy option foresees the adoption of legislative and non-legislative actions designed to increase the awareness of EU citizens of their right under Article 20 EC. These actions would not impose compulsory action on Member States, but rather depend on voluntary action and cooperation by national governments. Legislative action is limited to a non-binding Recommendation to Member States to print Article 20 EC in passports. This option also includes awareness raising campaigns for EU citizens.

This policy option would entail some financial costs which would be borne by the EU and the Member States.

Each action in the Policy Option is considered in turn:

#### **Action 1: Recommendation to Member States to print Article 20 EC in passports**

This action is designed to complement the Commission Communication "Towards an effective diplomatic and consular protection of Union citizens in third countries". It would be effective in increasing the awareness of EU citizens of their right to protection as enshrined in Article 20 EC. It is estimated that between 60% -

70% of European citizens are passport holders<sup>34</sup> and thus the overall number of passport holders in Europe is between 295 and 344 million.

The printing of Article 20 EC in new passports issued after 1 July 2009 would not entail any significant cost<sup>35</sup>. It is estimated that around 12% of existing passports (35-41 million) are renewed annually in the EU. If no other action were taken, it would take between 8 and 10 years before all EU passports contained Article 20 EC.

In order to inform citizens whose passports are issued without a reference to Article 20, it is recommended to distribute a sticker. To assist the Member States, the Commission will make available stickers for voluntary distribution. It is for the Member States to decide if and how to distribute them. Each Member State would determine the competent authorities for distributing the sticker in accordance with national law. To ensure that the passports are not invalidated, it is recommended to affix the sticker on the outside rear cover of the passport.

The sticker would be self-adhesive and very simple (e.g. there is no need to include a security or anti-forgery chip because the sticker does not provide new rights or entitlements) and printed in all Community languages. There would be no extra costs for translation, since Article 20 EC is already translated in all Community languages. The estimated cost for the production of stickers is approximately €0,01 per piece (ca €10.000 for 1 million stickers).

It is estimated that approximately 50 million stickers would be required per year (based on the assumption that the estimated 80 million trips per year are made by ca. 50 million persons). The estimated total cost, to be borne by the EU, would then be €500.000 per year.

## **Action 2: Publish measures connected with the implementation of Article 20 EC**

For the sake of transparency, citizens should be properly informed of their rights under Article 20 EC. The existing non-binding Guidelines on the application of this Article<sup>36</sup> and other implementing measures should therefore be published in the Official Journal and other places (e.g. the future EU web-site and the national web-sites of the Ministries of Foreign Affairs). This action would complement Action 1. The costs of this action would be very low and part of the costs for Action 3.

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<sup>34</sup> In 2007 in the UK, 80% of the population holds a passport (source <http://www.statewatch.org/news/2007/feb/uk-nao-passports.pdf>). This figure is likely to be lower in other EU Member States, where people can use national ID to move across Europe.

<sup>35</sup> European passports are already in the process of being changed in order to include standards on security features and biometrics. Council Regulation 2252/2004 of 13 December 2004 requires that all new EU passports issued after 2009 will include biometric identifiers. [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l\\_385/l\\_38520041229en00010006.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_385/l_38520041229en00010006.pdf)

<sup>36</sup> "Guidelines on consular protection to Union citizens in third countries", document 10109/06 of 2.6.2006.

### **Action 3: Set up an EU website on consular protection**

An EU website on consular protection on the "Europa" site could play a central role in fostering the awareness of EU citizens of their rights under Article 20 EC. Practical information, which is currently not easily available to citizens, such as up-dated contact details of the Member States' embassies and consulates in third countries could be made available this way. A future EU telephone number could be displayed as well as user-friendly explanations of Article 20 EC and Decision 95/553/EC. Links to the web-sites of the Member States' Ministries of Foreign Affairs' websites and the web-site elaborated by the Council Secretariat could be established as well as links between the Member States' different sets of travel advice.

The costs will depend on the complexity of the website and other factors. A rough estimate for developing the new website would be €500.000. This would cover the inception (consulting stakeholders), the elaboration as well as the actual construction of the website. The maintenance costs could be estimated to amount to €100.000 per year.

### **Action 4: Dissemination of posters**

Disseminating posters on the right to consular protection is likely to be another effective measure in increasing awareness. The Commission has elaborated a poster which explains citizens' right to consular protection under Article 20 EC and Decision 95/553/EC in simple terms. The poster has been translated in all Community languages and has been sent to travel agencies in three Member States in 2007 (Germany, Ireland and Czech Republic). To save costs, the poster has been printed only on demand and distributed in electronic version to those interested.

The cost estimated for this campaign would depend on the number of requests, but is likely to be rather low since the poster is ready for distribution in all Community languages. The cost for the production of the poster was €18.000 in 2007.

### **Action 5: In cooperation with Member States, assess the extent and nature of discrepancies in legislations and practices in the field of consular protection**

A comparative study would be useful to assess the extent and nature of discrepancies in legislations and practices in the field of consular protection. The costs of this study, which would be carried out by an external contractor, could be estimated to amount to €150.000 if a call for tender is published.

### **Action 6: Publishing updated contact details of embassies and consulates of the Member States in third countries**

To be able to assert their rights under Article 20 EC, citizens need access to an up-to-date list of the Member States' embassies and consulates in third countries,

including their contact details. This information, which is collected on a bi-annual basis by the Council Secretariat,<sup>37</sup> is currently not easily available to the public. The Commission will therefore ask the Member States to provide it with this information in order to publish it on the proposed web-site (Action 3).

The cost of publishing the information would be small and the cost of updating the information would be modest. Member States would be requested to provide the Commission with up-dated information. According to a note of the Secretariat General,<sup>38</sup> Member States have 1436 consular representations in third countries. Approximately 5% of these representations (i.e. 70 representations) change address each year. This action would imply, per se, no additional cost, but would be part of the maintenance of the future website on the Europa site (Action 3).

#### **Action 7: Explore the possibility of a coordinated presentation of travel advice**

Travel advice has the potential to reduce calls on consular protection by deterring EU citizens from travelling to high risk areas or helping them to prepare. The majority of stakeholders responded positively to the suggestion to coordinate the presentation of Member States' travel advice. This would not harmonise the contents of the travel advice, which would remain different, since Member States' citizens face different threats and have different needs. One example quoted during the public consultation was the controversy concerning the Mahomet caricatures which did not touch Union citizens to the same extent.

It is proposed to facilitate access to the Member States' travel advice by establishing links between Member States' travel advice through the future website on the Europa site (Action 3). This could improve the efficiency of consular services through increasing the preparedness of travellers. The costs for this action would be part of the maintenance of the website on the Europa site (Action 3).

#### **Action 8: Explore the need for sharing best practices and provide training to the key actors**

The Commission organised a seminar at the end of 2007 to exchange best practices between Member States. The outcome of this first seminar will be evaluated to assess future needs in this field. The estimated cost for the 2007 seminar, to be borne by the Commission is ca € 350.000. The estimated costs for 2008-2009 remain to be decided on the basis of the needs identified by Member States.

### **Table 5.1. Policy option 2**

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<sup>37</sup> "Presidency diplomatic representation in third countries – First half of 2007" document of the Council of the European Union, 16838/1/06 of 23.3.2007.

<sup>38</sup> 10149/2/06 REV 2 PESC 538 RELEX 386

Action	1. Awareness	2. Scope	3. Efficiency	4. Consent	Fundamental Rights	Costs	Stakeholders' attitude
<b>Legislative action</b>							
<b>ACTION 1</b> A recommendation to Member States to print Article 20 in passports <i>(Information)</i>	****				Improve the right to consular and diplomatic protection (Article 46 of the Charter).	The printing of Article 20 in new passports would not entail any significant cost for the Member States.  The cost of producing stickers would be borne by the EU. It is estimated to €500.000/year on the assumption that ca. 50 million stickers are required per year and the estimated cost is € 0.01 per sticker.	The majority of stakeholders, including Member States, supported this proposal.
<b>Non - legislative action</b>							
<b>ACTION 2</b> Publish guidelines and other measures implementing Article 20 <i>(Information)</i>	***				As above	Part of costs for Action 3.	OJ and other means should be used to make information available to the public
<b>ACTION 3</b> Set up a web-site on consular protection on the "Europa" site <i>(Information)</i>	****				As above	Ca. €500.000 for developing and implementing the web-site  Ca €5100.000 per year for maintenance borne by the EU.  Member States will be responsible for providing up-dated information.	The majority of stakeholders, including Member States, supported this proposal.

Action	1. Awareness	2. Scope	3. Efficiency	4. Consent	Fundamental Rights	Costs	Stakeholders' attitude
<b>ACTION 4</b> Disseminate posters (Information)	****				As above	Costs borne by the EU The costs for the production of the poster was €18.000 in 2007 Low distribution costs borne by the MS	Involving other stakeholders (Member States, NGO's etc) was considered important.
<b>ACTION 5</b> Assess the extent and nature of discrepancies in Member States' legislations and practices in the field of consular protection (Scope)	**				As above	Approx. €150.000 borne by the EU	This action was not mentioned in the Green Paper.
<b>ACTION 6</b> Publish updated contact details of Member States' embassies and consulates in third countries (Information)	***				As above	Part of the cost for Action 3. MS responsible for providing up-dated information.	Stakeholders and most MS favourable. UK afraid this could trigger excessive burden on bigger countries
<b>ACTION 7</b> Explore the possibility of a coordinated presentation of travel advice (Information)	***				As above	Part of the cost for Action 3. MS responsible for providing up-dated information.	General agreement.
<b>ACTION 8</b> Explore the need for sharing best practices and provide training (Information)			***		As above	Ca €350.000 in 2007 to be borne by EU Costs for 2008-2009 remain to be determined on the basis of Member States' identified needs,	General agreement. IE, FR and UK questioned the added value of training provided by the Commission.

### Necessity and added value of the proposed actions in Policy option 2

Policy option 2 focuses on awareness-raising. Community action is necessary to effectively raise Union citizens' awareness of Article 20 EC and of its implications. Information campaigns carried out throughout the EU are likely to be more efficient in terms of awareness-raising. The printing of Article 20 EC in all new

passports would be a simple and efficient means (Action 1). Setting up a web-site on the "Europa" site dedicated to consular protection (Action 3) would be an efficient means of making available data which is currently not published or not readily available, such as measures implementing Article 20 EC (Action 2), providing contact details of Member States' representations in third countries (Action 6) and establishing links between Member States different sets of travel advice (Action 7). Finally, Action 8 would contribute to a more effective protection on the spot of unrepresented EU citizens.

### 5.3. Policy Option 3

This option comprises all actions listed in policy option 2. In addition, it includes actions that strengthen and clarify the scope of consular and diplomatic protection as well as consular cooperation between Member States. Some measures will entail medium to high costs. This "package" of actions includes legislative measures that would clarify the scope of with a view to ensuring a similar level of protection to all Union citizens. It could also ensure consular protection to EU citizens' family members who are not EU nationals. Such legally binding measures would alleviate the negative consequences triggered by the existence of different levels of consular protection provided to citizens by the 27 Member States. It also includes several non-legislative actions to increase cooperation and burden-sharing between Member States and to ensure a more effective protection of unrepresented EU citizens. Each action in the Policy Option is considered in turn:

#### **Action 9: Examine the possibility of ensuring citizens a similar level of protection irrespective of their nationality**

Decision 95/553/EC provides already for "minimum standards" for consular protection. However, this Decision is not exhaustive and variations remain between Member States as regards the scope and legal force of consular protection. The adoption of standards going beyond the scope of Decision 95/553 could provide a definition of consular protection services and reduce variations between those currently provided. As an example, only a few Member States recognize the right to judicial review against a refusal of protection. This and other discrepancies may deprive Article 20 EC of its full effect. These differences should be further examined in view of a possible legislative initiative. The definition of such standards could be controversial among Member States. The costs for this action are difficult to estimate at this early stage of policy development.

#### **Action 10: Ensure consular protection for the identification and repatriation of remains**

Ensuring consular protection for the identification and repatriation of remains would reinforce consular protection. It is estimated every year that approximately 415.000 Union citizens die in third countries.<sup>39</sup> Based on the assumption that 8.7%

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<sup>39</sup> This estimate is based on Eurostat data. Of the 415.000, it is estimated that 400.000 Union citizens die when living abroad and 15.000 die when travelling. The death rate has first been calculated for

of Union citizens travel to countries where their Member States are not represented, it is estimated that ca. 1.326 Union citizens die each year in a country in which their Member State is not represented. The estimated costs of the repatriation of remains are in the order of € 3,000-4,000 per repatriation. This means that € 4 to 5.3 million are spent every year for the repatriation of unrepresented EU citizens who die outside the Union. Most of the direct costs are fully or in part charged to individuals. The administrative costs to organise death registration and certification and the certificate for the transport of corpses or ashes are relatively low.<sup>40</sup> In view of the limited number of estimated cases, the costs of this measure, which would be borne in part by the Member States, would therefore be limited.

#### **Action 11: Simplify the procedures for repatriating remains of EU citizens who have died abroad**

The repatriation of remains entails the translation and legalisation of documents and death certificates, enquiries by the local police, autopsy in case of murder, a special ‘laissez passer’, a certificate that there is no risk to public health, and a special seal from the consulate. The procedures tend to differ between Member States. There is merit in simplifying and minimizing the administrative formalities, e.g. to harmonise the documents at the European external borders and to ensure the passage of the coffin within the EU until final destination (e.g. a ‘laissez passer’ certificate could be printed in all European languages and be inserted in the European Border Code to make border guards aware of the existence of this document). There are potential efficiency and reinforcement impacts and the costs would be offset by efficiency benefits. In view of the limited number of estimated cases (ca. 1.326 cases per year, see Action 10), the costs of this measure, which would be borne in part by the Member States, would be limited.

#### **Action 12: Examine the possibility of ensuring consular protection to EU citizens’ family members who are not EU nationals**

Approximately 6 million EU citizens are married to non EU nationals (1.2% of the total EU population).<sup>41</sup> EU citizens may also have other family members who are non EU nationals. It is estimated that around 6000 third country nationals married to EU nationals could need consular assistance while travelling outside the EU. This constitutes almost 1.2% of total potential demand for ‘EU’ consular services.

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each Member State and for the whole EU (1%). This rate has been applied to the number of Union citizens living outside the EU (estimated to 40 million) and the number of trips outside the EU. In the latter case, the death rate has been calculated for one week, which is the average length of a trip.

<sup>40</sup> For example, a certificate for the transport of corpses or ashes issued by the French authorities costs between 25 to 46 Euro. The same certificate issued by the Italian consulates costs 30 Euro, by the German authorities 20 and up to 60 Euro if issued by the Dutch authorities. The consular fees for a death registration and certification amount to 143 Euro for British consulates, while the Czech consulates, for example, only charge 10 Euro.

<sup>41</sup> This estimate is based on the statistical data on mixed marriages (EU nationals married to non-EU nationals) provided by 10 Member States. The percentage of mixed marriages has been calculated on the total number of marriages in a country and the percentage has been applied to the proportion of the married population in the EU.

The majority of Member States do not extend the consular protection to non-EU nationals married to their citizens.

The costs of this action are likely to be proportionate to the numbers of non-EU national family members. If consular protection is extended to EU family members and the demand for consular assistance is increased by 1.2%, the number of consular staff should also be increased by 1.2%. A rough estimate of the cost would therefore be a proportional increase of 1,2 % of existing consular staff to manage the higher demand. The costs of the consular services would in part or fully be charged to individuals. The financial costs for the individuals would depend on the pricing policies of the individual Member States.

**Action 13: Explore the need to simplify the procedure for financial advances required under Decision 95/553/EC**

An estimated 6,000 financial advances are given annually to EU citizens outside the EU.<sup>42</sup> The provision of advances accounts for 1.4% of all cases of consular assistance provided by the Member States. If the same proportion is applied to cases of consular assistance provided to unrepresented EU citizens (estimated to be 41,376) the number of financial advances given annually to unrepresented EU citizens could be estimated at only 579 cases.

A possible solution mentioned in the Green Paper could be to centralise the processing of all files in a common office in the third country, thereby simplifying the administrative steps described in Decision 95/553/EC. If the procedures to obtain financial advances were simplified, the measure would reduce the time and efforts needed to obtain the money. This should therefore mean a cost-saving.

**Action 14: Setting up an EU telephone number on consular protection**

The telephone number would be an EU telephone line service which would provide citizens with practical information on consular services, e.g. on the contact details of the Member States' representations in third countries they plan to visit. This measure would be effective in enhancing visibility of Article 20 EC. One possibility could be to use the existing Europe Direct free phone number, which is usually free of charge with operators working in all Community languages. This infrastructure would obviously need to be adapted and the costs, to be borne by the EU, would depend on the how the telephone number is set up.

**Action 15: Recommendation to Member States, which have not yet ratified the 1973 Council of Europe Convention, to accede to it.**

This measure would help reduce the emotional stress and other costs in repatriating mortal remains from third countries. The number of deaths abroad is likely to increase as the number of people living in and travelling to third countries is growing. Currently, only 15 Member States have acceded to the Council of Europe

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<sup>42</sup> This estimate is based on data provided by the UK assuming that it is typical for the EU as a whole.

Convention of 26 October 1973 on the transfer of corpses, which regulates the entry into their territory, or the passage in transit through the territory, of the corpses of persons deceased on the territory of another country. If the Convention was acceded by all the Member State, the formalities required for the international transfer of corpses would be simplified and a uniform mortuary "laissez-passer" could be introduced. This would also trigger the creation of an EU-wide provision to uniformly govern the repatriation of mortal remains from one Member State to another (see action 11 above). The costs would be minor and borne by the Member States. In the long term, it can be anticipated that the administrative costs linked to the transfer of corpses will decrease due to an increased efficiency of the system regulating the repatriation of mortal remains.

**Action 16: Examine the possibility of setting up a compensation system between Member States**

The most appropriate method of ensuring a debt compensation system needs to be further examined in order to enhance the efficiency of Member States' consular resources while providing consular services to citizens of other Member States. The system should enable Member States to be swiftly reimbursed of the costs incurred in providing consular protection to EU citizens of other Member States. The mechanism could be established between the Member States taking into account the relevant provisions in the existing Guidelines on consular protection to Union citizens in third countries. To provide added value, it would need to be administratively simple and efficient (i.e. reimbursement should be made within a reasonable amount of time). The modalities of such a system need to be further examined with Member States. The costs of such a compensation system could be further assessed in a study.

**Action 17: Set up a common office as a pilot project in an area where Member States' representation is inadequate**

The creation of common offices, open to all Union citizens, would enhance the effective operation of Article 20 EC and allow for savings and enhanced cooperation between Member States. As pointed out by several Member States, the practical modalities require careful examination and the modalities of such offices remain to be discussed. The Commission would therefore propose to set up a common office as a pilot project, in cooperation with Member States, in a third country in which few Member States are represented. Clear and transparent rules on sharing the work are therefore necessary. Following an evaluation of the pilot project, the common offices could be expanded to other areas of the world. The common offices could be housed together with Commission delegations. The costs should be shared pro-rate between the participating Member States. This measure could have elevated start-up costs (infrastructure, equipment, human resources, security arrangements). However, these costs are likely to be off-set by subsequent savings. Cost-efficiencies will be reached in the longer term through the establishment of common rules on charging and burden sharing.

**Action 18: Publication of the arrangements on burden sharing between the Member States in third countries**

The publication of the arrangements on burden sharing between Member States in third countries, such as the Guidelines on consular protection of EU citizens in third countries and the concept of "Lead State", would increase transparency and would be a complementary measure to Action 17. To complete the functions performed by the new common offices, the Member States would also need to draw up and make available to citizens a set of rules establishing a system for deputising and sharing the work done by the common office. The costs for this action are likely to be minor and part of the costs for Action 3.

**Action 19: The insertion of a consent clause in “mixed” agreements concluded by the Community and its Member States and recommend Member States to insert a consent clause in their bilateral agreements with third countries**

The insertion of a consent clause in “mixed” agreements concluded by the Community and its Member States would enhance legal certainty for citizens since it would ensure that third countries agree that EU citizens can be assisted by any Member State represented in their country. This measure could be complemented by a Recommendation to Member States to include consent clauses in their bilateral agreements. The measure is not likely to trigger any negative consequence and its costs would be minor. However, several Member States have questioned the need for this action.

**Action 20: Authorise the Union to obtain the consent of third countries in areas of Community competence to exercise protection via the Commission delegations**

The Commission will also consider the possibility of obtaining the consent of third countries to exercise its protection through the Commission delegations in cases falling under Community competence in line with the "Odigitria" case-law.<sup>43</sup> In that case, a vessel flying the Greek flag was seized by the authorities of Guinea-Bissau with which the Community had concluded a fishing agreement. The applicant claimed that the Commission delegation had failed to take action to request the release of the vessel pursuant to the fishing agreement. However, the Court of First Instance found that the Commission delegation had fulfilled its obligations to provide diplomatic protection to the master and the applicant.

Although no general lesson can be drawn from the judgment outside the context of the fishing agreement concerned, the Commission will in the longer term consider the possibility of obtaining the consent of third countries to allow the Union to exercise its protection through its delegations. Although the Member States have the primary responsibility for ensuring protection to their citizens, the Commission delegations could, where authorised by the Council, exercise protection in matters falling under Community competence.

The exact costs and impacts of this action are difficult to estimate at this stage.

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Case T-572/93, *Odigitria AAE v Council of the European Union and Commission of the European Communities*.

Table 5.2 – Policy option 3

Action	1. Awareness raising	2. Reinforce & clarify scope	3. Increase efficiency	4. Ensure consent	Fundamental Rights	Costs	MS attitude
<b>Legislative action</b>							
<b>ACTION 9</b> Examine the possibility of ensuring citizens a similar level of protection irrespective of their nationality <i>(Scope)</i>		****			Enhancement of Article 7: Respect for private and family life Enhancement of Article 46:	Medium costs. The costs of the consular services will in part or in full be charged to individuals.	Supported by several Member States and other stakeholders. Some Member States underlined the need to clarify several questions, such as definition of "family member"
<b>ACTION 10</b> Ensure consular protection for the identification and repatriation of remains <i>(Scope)</i>		****			Enhancement of Article 1: Human dignity	Low costs in view of the limited number (estimate 1.326 Union citizens per year).. Most of the direct costs are fully or in part charged to individuals	Generally positive reactions
<b>ACTION 11</b> Simplify the procedures for repatriating remains <i>(Scope)</i>		***			Enhancement of Article 1: Human dignity	Low costs borne by Member States	Generally positive reactions
<b>ACTION 12</b> Examine the possibility of ensuring consular protection to EU citizens' family-members who are not EU nationals <i>(Scope)</i>		****			Increase the right to consular protection of citizens	Low to medium costs borne by Member States. As a rough estimate, this would lead to an increase of 1,2 % of existing consular staff	Mixed reactions.
<b>ACTION 13</b> Explore the need to simplify the procedures for financial advances required under Decision 95/553 <i>(Scope)</i>		**			As above	Low costs borne by the Member States. The number of financial advances is estimated to around 600 cases/year.	Mixed reactions.
<b>Non - legislative action</b>							
<b>ACTION 14</b> Set up an EU telephone number on consular protection <i>(Information)</i>	***				As above	Medium costs borne by EU.	Overall agreement with this measure
<b>ACTION 15</b> Recommend Member States to accede to the 1973 Convention on the transfer of corpses <i>(Scope)</i>		****			Enhancement of Article 1: Human dignity	Low costs borne by Member States.	Overall agreement with the measure

Action	1. Awareness raising	2. Reinforce & clarify scope	3. Increase efficiency	4. Ensure consent	Fundamental Rights	Costs	MS attitude
<b>Legislative action</b>							
<b>ACTION 16</b> Examine the possibility of setting up a compensation system between Member States (Structures)			***		Increase the right to consular protection of citizens	Minor costs associated to administrative tasks and transactions	Generally positive reaction. Member States stressed that such a compensation system remain within their competence
<b>ACTION 17</b> Set up a "common office" in one area as a pilot project to be evaluated (Structures)			****		As above	Medium costs borne by the Member States and the EU. Start-up costs to ensure the security of the offices. Cost-efficiencies will occur in the longer term.	Mixed reactions. PL, FR, UK expressed some concerns and IE a more negative view
<b>ACTION 18</b> Publish arrangements on burden-sharing between the Member States in third countries (Structures)			***		As above	Low costs borne by MS. Increase efficiency and reduce costs in the longer term. Difficult, to estimate these efficiency gains.	Some stakeholders expressed a positive attitude towards this measure
<b>ACTION 19</b> Insertion of a "consent clause" in "mixed" agreements and recommend MS to include consent clauses in their bilateral agreements (Consent)				*****	As above	Low costs borne by EU and MS. The measure triggers no negative consequences and its costs are minor.	Generally positive reaction but some MS (UK, FR, PL, SI, LX) questioned the need and legal basis for this action
<b>ACTION 20</b> Consider the possibility of obtaining the consent of third countries to allow the Union to exercise protection via Commission delegations (Consent)				*****	Improvement of the right to diplomatic and consular protection.	Low costs, if any, borne by EU	Several Member States questioned the need and legal basis for this action

### **Necessity and added value of the proposed actions in Policy option 3**

Informing EU citizens of their rights under Article 20 is necessary, but is in itself not enough to ensure an adequate level of protection for unrepresented citizens in distress in a third country. The creation of an EU telephone line on consular protection would have the double advantage of increasing awareness and facilitating citizens' access to protection (Action 14). Increased awareness is likely to entail an increase in the number of requests for consular protection.

The current differences among Member States when it comes to consular protection could result in situations where unrepresented citizens are treated differently and receive a less favourable treatment as a matter of chance because he or she is addressing a Member State which applies less stringent rules. It is therefore necessary to clarify at EU level the scope of protection to which citizens are entitled. Action at EU level is necessary since progress is likely to be slow if Member States act alone. First, it is necessary to examine the possibility of reducing variations between the Member States as regards the scope of protection (Action 9). Moreover, several actions are necessary to facilitate the often burdensome procedure of repatriation of mortal remains which is currently not explicitly covered by the existing acquis. It is therefore suggested to ensure consular protection for the identification and repatriation of remains (Action 10), to simplify the administrative procedures for repatriating mortal remains (Action 11) and to recommend Member States to ratify the relevant international convention (Action 15). In addition, the public consultation confirmed the need to examine the possibility of ensuring consular protection to EU citizens' family members who are not EU nationals (Action 12). Such protection is currently not foreseen in the majority of the Member States' legislation and is not explicitly covered by Decision 95/553/EC.

The difficulties in accessing consular assistance are increased by the limited burden-sharing arrangements between Member States. Lack of simple procedures is a further obstacle for the provision of effective consular protection. In this respect, it is proposed to explore the need to simplify the procedures for financial advances required under Decision 95/553/EC (Action 13) and to examine the possibility of setting up a compensation system between Member States (Action 16). Actions are also foreseen to assist Member States in pooling resources, in particular to set up a "common office" as a pilot project to be evaluated (Action 17) and publish existing rules on burden-sharing (Action 18). The preferred option finally addresses the question of the consent of third countries where it proposes to insert a standard "consent clause" in bilateral and "mixed" agreements with third countries (Action 19). The Commission will also consider the possibility for the Union to exercise protection through its delegations in cases falling under Community competence (Action 20).

### Estimated cumulated costs for the preferred option

The cumulated estimated costs for the actions selected in the preferred option (actions 1-20) are approximately €2.850.000 for the time-span covered by the Action Plan (2007-2009).

This includes estimates for actions nr. 1, 2, 3, 4, 5, 6, 7 and 8. It does not include estimates for the other actions for which a reliable estimate cannot be given at this early stage of policy development.

**Table 5.3. Estimate of cumulated costs of the preferred option**

Action Nr.	Action	Estimated costs 2007-2009	Costs borne by whom
1	a) Print Art. 20 in passports as of 1.7.09  b) Affix stickers on passports issued before that date	a) Printing of Art. 20: low costs  b) Ca €500.000/year (2008-2009) Estimated nr. of stickers required per year: Ca 50 million. Estimated cost per sticker: € 0.01	a) Member States  b) the EU
2	Publish measures implementing Art. 20	Would be part of costs for action 3	The EU and the Member States
3	Set up a web-site on consular protection on the Europa site	A rough estimate for developing the new website would be €500.000. This would cover inception (consulting stakeholders), elaboration and the actual construction of the website. The maintenance costs could be estimated to amount to €100.000 per year.	The EU
4	Dissemination of posters	The costs will be part of the overall costs for information and training measures estimated to €400.000 per year.	The EU
5	Assess the nature and extent of discrepancies in legislation and practices in the field of consular protection	Ca. €150.000	The EU
6	Publishing up-dated contact details of Member States' representations	Part of maintenance costs for web-site (Action 3)	The Member States and the EU

7	Coordinated presentation of travel advice	Part of maintenance costs for web-site (Action 3)	The Member States and the EU
8	Exchange of best practices and training	The costs will be part of the overall costs for information and training measures estimated to €400.000 per year.	The EU
9	Ensure citizens a similar level of protection	Difficult to estimate costs at this early stage of policy development	
10	Ensure consular protection for the identification and repatriation of remains	Relatively low (administrative costs to organise death registration, certification, certificate for transport)	The Member States
11	Ensure consular protection for EU citizens' family members who are not EU nationals	Estimate increase of 1,2% of the consular staff (proportionate to the number of non-EU family members)	The Member States
12	Simplify the procedure for financial advances	Likely to be low in view of the few cases	The Member States and the individuals)
13	Set up an EU telephone number on consular protection	Medium to high development costs.	The EU
14	Recommend Member States to ratify the 1973 Convention on transfer of corpses	Low costs	
15	Simplify the procedures for repatriating remains of EU citizens	Low costs	The Member States
16	Compensation system between Member States	Difficult to assess at this stage	The EU/Member States
17	Set up a "common office" in a third country as a pilot project	Difficult to assess at this stage	To be decided at a later stage
18	Publish arrangements on burden-sharing between Member States	Low	The EU
19	Insert a "consent clause" in mixed agreements with third countries	Difficult to assess	The EU
20	Examine the possibility for the Union to exercise a duty of protection in cases falling under Community competence	Difficult to assess	The EU

#### 5.4. Policy Option 4

This policy option comprises all the legislative and non-legislative actions listed in the policy options 2 and 3 and includes further measures.

Some of the actions in this policy option are characteristically “the most extensive way possible” to address the problems in the current situation. In addition to further extending the scope of consular protection, the actions proposed envisage an overall higher level of activity and responsibility at EU level, for example the establishment of common offices in several areas and an EU Consular Academy.

The public consultation showed that these measures are highly complex from a technical and legal point of view and need additional preparation in cooperation with Member States and other stakeholders. Some of the measures are controversial and questioned by certain Member States. Some of these actions trigger medium to high costs linked to their implementation. Each action in the Policy Option is considered in turn:

##### **Action 21: Ensure consular protection for third country nationals who are long-term residents in a Member State of the EU**

It could also be envisaged to ensure consular protection to third country nationals who are long-term residents in a Member State to ensure that they benefit from a level of consular protection similar to that enjoyed by EU citizens from their countries of residence. Of these, it is estimated that around 1.6 million third country national long term residents undertake trips outside the EU every year. An estimated 9.000 long term residents could need consular assistance while travelling outside the EU.

The costs of extending consular protection are likely to be proportionate to the numbers of third country nationals with long-term residence needing consular assistance. If consular protection was extended to third country nationals with long-term residence and the demand for consular assistance increased by 0.67%, the number of consular staff should also be increased by 0.67% in order to manage this higher demand. The costs of the consular services will in part or fully be charged to individuals. The costs will also depend on the payment policies of the individual Member States.

##### **Action 22: Set up common offices in four areas of the world**

This action would be effective in increasing the efficiency of the deployment of Member States' consular resources and in ensuring that unrepresented EU citizens have ready access to other Member States' representations in third countries. These offices could be set up in four areas where the Member States have a low representation and a high number of European tourists (the Caribbean, the Balkans, the Indian Ocean and West Africa). They could act as a common consular corps that could assist any EU citizen in distress. The specificities and options for the offices are described under Action 17. Setting up common offices would help to streamline functions and save on the fixed costs of the structures of Member States'

diplomatic and consular networks. This action could have elevated start-up costs (infrastructure, equipment, human resources, security arrangements). Some high costs might be also borne to ensure the security of the offices. However, cost-efficiencies will be reached in the medium to long term through the minimising the costs of being present even when calls for protection are low. The action would need to be supported by the establishment of rules on cross charging and burden sharing.

This action would ensure a better protection of unrepresented EU citizens travelling to and living in third countries. The beneficial impacts of this measure would be higher than those triggered by Action 17, which foresees the creation of one common office as a pilot project.

**Action 23: Allowing the common offices to perform consular functions, such as issuing visas or legalising documents**

Allowing the common offices to perform consular functions, such as issuing visas or legalising documents would reinforce consular protection and increase the efficiency of the use of EU Member States' consular resources. The Action would complement Actions 17 and 22.

**Action 24: The establishment of a “European Consular Code” to define the burden sharing between the Member States**

The "Barnier report"<sup>44</sup> suggested that a European Consular Code should be established to underpin cooperation between Member States' diplomatic missions and the delegations of the EU. There would be benefit in drawing up a Code which clearly defines the stand-in arrangements in each country (for example Member State X would represent Member States Y and Z in India) in order to create consular synergies. It would strongly reinforce and clarify consular protection and contribute to efficiencies.

The system of deputising exists already in the field of the common visa policy where significant progress has been made through the Common Consular Instructions. The costs linked to this measure, which would be borne both by the EU and the Member States, are expected to be low.

**Action 25: An EU consular academy**

An EU consular academy could be created for the training of senior consular officers. The initiative would have the merit of improving consular coordination and consular assistance consistency across Member States. The academy would also enable the exchange of best practices and of consular staff.

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<sup>44</sup> Report of 9 May 2006 by Michel Barnier to the President of the Council of the European Union and the President of the European Commission: "For a European civil protection force: europe aid".

Experiences could be drawn on similar initiatives at the European level (e.g. for lawyers, police, border guards). It is estimated that only 10% of consular staff are senior, and thus the academy would focus on training 1,500 persons.

**Action 26: Encourage research and development of DNA analysis tools**

This action would contribute to increasing the effectiveness of victim identification processes and reducing emotional stress and other costs. The benefits of having effective tools for analysing DNA would largely be felt in circumstances of natural disasters and terrorist actions with high casualty level. The costs of this measure are likely to be medium and borne by the EU. This measure is not included in the preferred option as it is technically complex and requires further preparation in cooperation with Member States and other stakeholders.

Table 5.3. Policy option 4

Action	1. Awareness raising	2. Reinforce & clarify scope	3. Increase efficiency	4. Ensure consent	Fundamental rights	Costs	MS attitude
<b>Legislative action</b>							
<b>ACTION 21</b> Ensure consular protection to third country nationals who are long-term residents in another Member State of the EU <i>(Scope)</i>		****			Extension of fundamental right to consular protection	Medium costs borne by MS. The costs might be charged to individuals	Mixed views.
<b>Non - legislative action</b>							
<b>ACTION 22</b> Set up "common offices" in four areas of the world <i>(Structures)</i>	**		****		As above	Medium start up costs (infrastructure, equipment, security) but high efficiency results.	Overall agreement with the measure. PL, FR, UK expressed some concerns and IE a more negative view
<b>ACTION 23</b> Allow "common offices" to perform consular functions, such as issuing visas or legalising documents <i>(Structures)</i>			****		As above	Low costs, if any, borne by the MS (in comparison with current cost levels). Cost efficiency would accrue.	Some stakeholders expressed a positive attitude towards this measure
<b>ACTION 24</b> Establish a "European Consular Code" to define the burden-sharing between Member States <i>(Structures)</i>	**		***		As above	Low costs borne by EU and MS  Administrative costs at the beginning but cost efficiency would accrue.	
<b>ACTION 25</b> Create an EU Consular Academy <i>(Structures)</i>			***		As above	Medium costs borne by the EU and partially charged to MS.	
<b>ACTION 26</b> Encourage research and development of for the identification of remains <i>(Scope)</i>		**			Enhancement of Article 1: Human dignity	Medium costs borne by the EU.	Generally positive reactions

## 6. COMPARISON OF THE POLICY OPTIONS AND ELABORATION OF THE PREFERRED OPTION

The process of defining policy options involved grouping the proposals for actions into three policy options. Assessment of the policy options has involved systematically considering each of the individual actions described within the policy option and other actions that have not been retained. Many of the actions are complementary, but in a small number of cases the actions could themselves be alternative means of achieving the objectives. The pursuit of some actions could increase the need for other actions. For example, increasing the awareness of EU citizens of their right to diplomatic and consular protection when unrepresented in third countries could increase the need for training of consular staff to deal with citizens from countries other than their own.

The preferred policy option is outlined below. It is elaborated around the four main policy objectives. The elaborations indicate the main problems addressed, the rationale for EU intervention and the actions that contribute most effectively to the achievement of the objectives.

### 6.1. The preferred policy actions to achieve the main policy objectives

The following actions were not taken on board in the preferred options since the public consultation showed that they are not likely to be implemented in the time-frame covered by the Action Plan. They raise technical and legal issues that need in-depth examination with stakeholders, including Member States. Some of the measures could potentially entail significant costs and could also be politically controversial.

Action 21: Ensure consular protection to long-term resident third country nationals. This action raises complex legal issues which need to be further examined. It is also likely to be controversial in those Member States which do not have any similar provisions at the moment.

Actions 22-23: The setting up of "common offices" in four areas performing a wide range of consular functions is an ambitious proposal which needs to be further explored in cooperation with Member States.

Actions 24 and 25: Establishment of a 'European Consular Code' and the creation of an EU consular academy are likely to be controversial and would require a considerable political commitment by Member States.

Action 26: To encourage research and development of DNA analysis tools for the identification of remains is a complex issue which needs to be further explored in cooperation with Member States.

On the basis of the comparison of the options and their impacts on meeting the policy objectives and contributing to and respecting fundamental rights, and in the light of Member States' and other stakeholders' views and practicality of costs, the preferred option is Option 3.

This includes actions which fulfil the four policy objectives, contribute to and respect fundamental rights, entail moderate costs and are not too controversial from the point of view of Member States and other stakeholders.

***To increase awareness of EU citizens of their fundamental right to diplomatic and consular protection when they are outside the EU (policy objective 1):***

The preferred option should include Actions 1, 2, 3, 4, 5, 6 and 7. Actions 1, 3 and 4 are particularly concerned with raising awareness and Actions 3 and 6 are concerned with ensuring that information is up to date and easily accessible to enable EU citizens to exercise their rights. Printing Article 20 in passports and inserting a sticker in existing passports (Action 1) would be inexpensive and efficient. However, far from all Union citizens own a passport. Other complementary actions are therefore needed. The distribution of posters (Action 4) is likely to be cost effective in achieving the objective. Publishing guidelines and other implementing measures (Action 2) will help clarify what might be expected of consular offices. Creating an EU web-site on consular protection on "Europa" with practical information and explaining the rights of citizens (Action 3) would mean that information would be more likely to reach EU travellers. The provision of up-dated contact details of Member States' representations in third countries (Action 6). The public consultation showed also support for an improved coordination of the presentation of the Member States' different travel advice. The future web-site could be used to establish links between the different travel advice (Action 7).

The financial costs of these measures are likely to be medium and borne by the Commission and Member States. There are unlikely to be significant drawbacks except that the publicity could raise expectations and lead to some unnecessary calls on the resources of consulates. It could result in an increase in 'demand' for consular services and there would be a need for consular services in third countries to meet these needs. The actions pertinent to the other general objectives would be beneficial in meeting these needs.

***To reinforce and clarify the scope of consular protection of unrepresented EU citizens and their family members and ensure that all EU citizens receive a similar level of protection (policy objective 2);***

There are a number of areas in which consular protection could be reinforced and clarified. They concern: facilitating access to consular protection; providing the right of appeal against a refusal of protection; improving the procedures for the identification and repatriation of remains; simplifying the procedures for the provision of financial assistance and ensuring consular protection for EU citizens' family members who are not EU nationals. These potential improvements and the actions that could be undertaken to achieve them are considered below.

The preferred option should include Actions 9, 10, 11, 12, 13, 14 and 15.

It is proposed to **examine the possibilities of ensuring citizens a similar level of consular protection irrespective of their nationality (Action 9)**. The scope and

legal force of consular protection vary between Member States. As an example, only some Member States recognize the right to judicial review against a refusal of protection. This and other discrepancies may deprive Article 20 EC of its full effect. These differences in Member States' legislation and practice in the field of consular protection will be assessed (Action 5).

It is proposed to take different actions to reduce the emotional stress and costs of delays **in identifying and repatriating the remains from third countries (Actions 10, 14, 15)**. The costs are usually borne by families or insurers and sometimes reimbursed by public authorities. The rationale for actions in this area is humanitarian. It is proposed to recommend the 15 Member States which have not yet ratified the 1973 Council of Europe to accede to it (Action 15). There would be no significant costs associated with this recommendation yet benefits would be evident. Moreover, it is proposed to ensure consular protection for the identification and repatriation of remains (Action 10).

It is also proposed to **examine the possibility of ensuring consular protection to EU citizens' family members who are third country nationals (Action 12)**. Approximately 6 million EU citizens are married to non EU nationals. EU citizens may also have other family members who are non EU nationals. It can reasonably be assumed that these family members will often travel together, particularly married couples, and are likely to be affected together by circumstances leading to the need for consular protection. It is also reasonable to assume that third country nationals married to EU citizens would need to benefit from consular protection similar to that enjoyed by their spouses (for example, emergency travel documents to enable travel back to the EU Member State in which they reside). The lack of protection may cause considerable difficulties and distress to EU citizens and their family members, as illustrated during the Lebanon crises in 2006. The costs are likely to be proportionate to the numbers of non EU national family members. It is estimated that 5,746 third country nationals married to EU nationals could need consular assistance while travelling outside the EU per annum. This is equivalent to around 1.2% of total potential 'demand' for 'EU' consular services.

Furthermore it is proposed to **explore the need to simplify the existing procedures for financial advances foreseen in Article 6 of Decision 95/553/EC (Action 13)**. It is estimated that a total 6,000 financial advances are granted to EU citizens by EU Member State consulates in third countries per year. Based on this estimate, financial advances are only a small proportion of the 'calls' made on consular protection services (around 1.4%). If it is assumed that 1.4% of consular assistance cases provided to unrepresented EU citizens are financial advances, consular authorities receive around 500-600 cases per year from unrepresented EU citizens. There is a presumption that the advances will be reimbursed by the beneficiary and, if these advances are provided by a Member State other than that of the beneficiary, the Member State of the beneficiary will act as guarantor. Due to the improvements in communications (money transfers etc.) in recent years, financial advances are nowadays considered as a last resort. However, there could be circumstances where citizens genuinely require such financial advances and where the cumbersome procedure causes stress. When major incidents or natural

disasters occur, the impacts on citizens can be extreme. Several Member States consider that the existing procedures function well. In the light of this, it is recommended to further examine the need to facilitate the procedures for financial advances in cooperation with Member States and other stakeholders.

The **creation of an EU telephone line on consular protection (Action 14)** will increase awareness and facilitate citizens' access to consular protection. Some Member States set up hotlines for their citizens and hotlines in the aftermath of natural disasters. A telephone line would be particularly beneficial for 'unrepresented' EU citizens, e.g. to inform the citizens of the contact details of Member States' consulates or embassies in the third country. It could also act as a 'filter', explaining to citizens the scope and effects of Article 20 EC and, where appropriate, direct citizens to the appropriate consulates.

***To ensure more effective protection on the ground for unrepresented EU citizens in third countries (policy objective 3)***

There is a general agreement that pooling resources to compensate for the inadequate consular presence in third countries is beneficial in terms of costs and effectiveness. There is scope for ensuring a more effective protection on the ground for unrepresented EU citizens. This could be achieved through: the coordination of travel advice; exchange of best practices and training; organising and pooling resources and effective and transparent burden sharing.

Another useful action would be to bring together the relevant actors to discuss common problems, promote the exchange of best practices, help preparing for future crises and facilitate the exchange of information between different actors. It is therefore proposed to **explore the need for sharing best practices and training. (Action 8)**. A seminar was held at the end of 2007 to discuss these matters with Member States. The estimated cost for this seminar is €350.000.

There are 166 third countries in the world. 17 third countries do not have a consular representation from any EU Member State; 18 countries only have one EU Member State representation, and 14 only two representations<sup>45</sup>. There is therefore a strong logic to pool some of the resources required to maintain consular representations for EU citizens in third countries. Economies of scale exist and the pooling of infrastructure would make better use of public funds where demand for consular protection is low, and the costs of maintaining very small consular representations outweigh their benefits. It would be necessary to define the minimum amount of consular representation required to support a viable consular representation.

The idea to set up **common offices (Action 17)** is therefore included in the preferred option. The creation of common offices, open to all Union citizens, would enhance the effective operation of Article 20 EC and allow for savings and enhanced cooperation between Member States. The practical modalities require

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<sup>45</sup>

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careful examination. The Commission proposes therefore a gradual approach, i.e. to set up a pilot project in a Commission delegation in a third country in which few Member States are represented (Action 17). The Member States would be able to provide their consular services in the common office. Following an evaluation of the pilot project, the common offices could be **expanded to other areas of the world (Action 22)**.

**The possibility of setting up a compensation system between Member States (Action 16)** is also included in the preferred option as a means to enable Member States to be reimbursed of the costs incurred in providing consular protection to citizens of other Member States. Moreover, the **arrangements on burden-sharing between Member States (e.g. the Guidelines on consular protection, the concept of "Lead State")** should also be published (Action 18).

*To ensure the consent of third countries to secure protection under Article 20 (policy objective 4)*

The requirement to ensure the consent of third countries is a general principle of international law. Article 20 EC provides that Member States shall "start the international negotiations required to secure this protection". It has been argued that a unilateral notification to the receiving State could suffice according to Article 8 of the Vienna Convention on consular relations.<sup>46</sup> However, the absence of an explicit consent does not ensure legal certainty. Moreover, the above Convention does not prevent States from obtaining the explicit consent of third countries.<sup>47</sup> This would ensure legal certainty and transparency for the benefit of the citizens, Member States and third countries. It would also prevent that third countries change their mind. It would finally dispense Member States' from the burdensome task of unilaterally notifying each third country individually.

The Commission would therefore recommend Member States to **include a "consent clause" in bilateral agreements with third countries and to insert a "consent clause" in future "mixed" agreements concluded by the Community and its Member States with third countries (Action 19)**. It will also examine the possibility for the Union to exercise protection through the Commission delegations in cases falling under Community competence (Action 20)

## 7. MONITORING AND EVALUATION

Table 7.1 indicates potential monitoring indicators and information sources that are applicable should the preferred option be implemented.

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<sup>46</sup> This Article reads: "Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State".

<sup>47</sup> Article 73 paragraph 2 of the Vienna Convention on consular relations reads: "Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof."

**Table 7.1 Potential monitoring indicators and information sources**

<b>Policy objectives</b>	<b>Possible relevant specific and operational objectives</b>	<b>Potential indicators</b>	<b>Information sources</b>
<b>1. To increase the awareness of EU citizens of their fundamental right to diplomatic and consular protection outside the EU</b>	Disseminate information about Article 20 EC by different means (poster, web-site etc)	Percentage of citizens aware	Eurobarometer surveys, the first one in 2008, to be carried out by the Commission
<b>2. To reinforce and clarify the scope of consular protection to unrepresented EU citizens and ensure that all EU citizens receive a similar level of protection</b>	Reduce variations in the scope of consular protection for EU citizens	Differences in scope Differences in charges	Periodic surveys of consular offices to be carried out by the Commission in cooperation with Member States  Initially at a biannual basis. At a later stage every five years
	To reduce variations in procedures for unrepresented citizens receiving consular protection in third countries	Differences in response	Periodic surveys of consular offices to be carried out by the Commission in cooperation with Member States  Initially at a biannual basis. At a later stage every five years
	To reduce the emotional stress and other costs of delays and complications in identifying and repatriating the remains	Delays in identification and repatriation	Periodic surveys of consular offices and surveys among citizens concerned to be carried out by the Commission in cooperation with Member States  Initially at a biannual basis. At a later stage every five years
	To minimise unnecessary distress, costs and delays to citizens who have been deprived of financial means	Time taken to decide on an application for financial assistance.  Losses due to advances not being returned	Periodic surveys of consular offices and surveys among citizens concerned to be carried out by the Commission in cooperation with Member States  Initially at a biannual basis. At a later stage every five years
	To reduce the emotional and other costs of third country family members of EU citizens who would otherwise not receive effective consular protection	Adoption of legislation  Implementation  Instances of refusal	Monitoring the implementation of the legislation to be carried out by the Commission

Policy objectives	Possible relevant specific and operational objectives	Potential indicators	Information sources
<b>3. To increase the efficiency of the use of EU Member States' consular resources</b>	Training of human resources	Resources spent on training  Competences acquired, particularly to provide Consular protection to non national EU citizens	Periodic surveys of consular offices to be carried out by the Commission in cooperation with Member States  Initially at a biannual basis. At a later stage every five years
	Set up common offices	Average costs and quality of services	Periodic surveys of common offices to be carried out by the Commission  Initially at a biannual basis. At a later stage every five years
	Effective and transparent burden sharing	Average costs and timeliness of cross charges	Periodic surveys of Member States
<b>4. To ensure the consent of third countries to secure protection under Article 20</b>	To ensure the consent of third countries that EU citizens can be assisted by any Member State represented in their country	Number of third countries granting consent	Periodic surveys to be carried out by the Commission  Initially at a biannual basis. At a later stage every five years
	To ensure consent of third countries for Community to exercise protection in areas of Community competence via Commission delegations	Number of third countries granting consent	Periodic surveys to be carried out by the Commission  Initially at a biannual basis. At a later stage every five years

## ANNEX 1

### **Summary of the replies to the Green Paper on diplomatic and consular protection of Union citizens in third countries**

Following the presentation of the Green Paper on diplomatic and consular protection of Union citizens in third countries<sup>48</sup> in November 2006, the European Commission launched a wide-ranging public debate aiming to gather the opinions of interested parties. In this Green Paper, the Commission put forward ideas for debate, regarding the strengthening of the right of Union citizens to Community diplomatic and consular protection, as enshrined in Article 20 of the Treaty establishing the European Community.

The consultation launched by the Commission attracted a high number of responses (about 50) from a wide range of stakeholders, which signals the importance of the subject treated. The contributors can be broadly categorised in the following groups of stakeholders:

- Member States and institutional bodies (national governments, parliaments and European institutions);
- Civil society (NGOs);
- Business sector (travel agencies); and
- Other (lawyers, academics)

The full list of contributors is found at the end of this document.

In general, the Green Paper has been welcomed positively. Although a few of the responses criticised some of the more drastic measures put forward by the Commission in certain areas of diplomatic and consular protection, the relevance and effectiveness of the majority of the proposed actions were not contested.

This paper provides a summary of the replies to the Green Paper. Although not all of the comments made by specific representatives could be cited in this summary document, all contributions sent to the Commission have been read and analysed and will be taken into consideration.

#### 1. Information for citizens

##### ***Information on the right to diplomatic and consular protection***

Actions proposed by the Commission in the Green Paper:

Distribute leaflets, including to the relevant trade sectors;

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<sup>48</sup> COM(2006)712 final

Put information on the "Europa" site and on the internet site of the Commission delegations in third countries;

Put up posters in airports, ports, railway stations or any other appropriate points; and

Citizen information services.

The majority of stakeholders affirmed the need to improve citizens' awareness on their consular rights in third countries by disseminating information and organising information campaigns.

Most of the respondents (Poland, European Economic and Social Committee, Province of Pistoia, Finnish Expatriate Society and YESTravel) pointed out that the Commission should cooperate with all of the stakeholders i.e. Member States, business organisations (such as travel agencies and airports), civil society (such as associations of expatriates and citizens) and local governments, because all of these have an important role to play in enhancing the effectiveness of the information campaigns and dissemination activities.

France however suggested that national governments would be better placed to inform their citizens since they can make clear what consular protection does and does not cover (the principle of subsidiarity). Matrix Legal Practice stressed that before running any information campaigns, the Commission and Member States would have to clarify the scope of the protection of Article 20 and the level of consular protection that a citizen has the right to access.

### ***Information on Member States' representation in third countries***

#### Actions proposed by the Commission in the Green Paper:

Publish and update the contact details of embassies and consulates of the Member States represented in each third country

In the instances where stakeholders had commented on this issue, an overall agreement with the proposal was expressed.

France suggested that there would be scope for improving the information that is already available instead of trying to create a body of new information while the United Kingdom cautioned that this measure might impose an excessive burden on countries with extensive networks of embassies and consulates.

### ***Printing Article 20 in passports***

#### Actions proposed by the Commission in the Green Paper:

Adopt a Commission Recommendation calling on the Member States to print Article 20 EC in passports.

The majority of stakeholders welcomed the idea of printing Article 20 in passports. A civil society organisation, ECAS, also stressed that this measure would provide citizens with the

necessary legal support when seeking consular assistance. It was suggested to print in passports not only Article 20 but also Article 46 of the European Charter of Fundamental Rights (Iniziativa Europea) and to stick an adhesive reporting the Article 20 in passports already emitted at the moment of the border control or at the moment of the renewal of the same document (Law students from Milan University).

The majority of Member States considered this measure as an effective means of further disseminating the information to EU citizens. The United Kingdom and Greece would consider printing Article 20 in the next generation of biometric passports if it is found to be cost effective. Ireland, however, was not convinced of the need to include Article 20 in Irish passports. As the authorities declared, there are many demands for inclusion in passports and they do not consider the inclusion of Article 20 to be a pressing issue for the Irish citizens.

### ***Coordinated presentation of advice to travellers***

Actions proposed by the Commission in the Green Paper:

Coordinated presentation of advice to travellers

The majority of stakeholders responded positively to this suggestion. In particular, the idea of creating a common and highly visible website that has links to travel advice for each Member State was welcomed.

Some Member States (France, United Kingdom, Poland, Ireland and Finland) and a representative of the business sector (the Group of National Travel Agents' and Tour Operators' Associations and the Guild of European Business Travel Agents), however, were more sceptical concerning the harmonisation and integration of different sets of national travel advice, given that different citizens face different threats and have different needs. With this in mind, it was considered that Member States would be better equipped to inform their own nationals.

### ***Publication of measures implementing Article 20***

Actions proposed by the Commission in the Green Paper:

Publish any measures connected with the implementation of Article 20 EC.

The majority of stakeholders expressed their overall support for the suggestion regarding the need to improve levels of information, albeit without providing any specific comments. A few stakeholders, however, did propose some interesting points. Poland and the European Economic and Social Committee stated that publishing measures concerning the implementation of Article 20 would be beneficial to the EU citizens. Nevertheless, the Official Journal should not be the unique source of that information and it would be recommendable to make it widely available to the general public by means of other media. YESTravel also stressed that locally monitoring of the implementation of Article 20 of the EC Treaty can be a complex task, unless Member States inform the Commission on local shortcomings affecting EU citizens.

## 2. The scope of protection for citizens

Although not specifically addressed by the Green Paper, several stakeholders invoked two additional issues concerning the scope of protection for citizens: the distinction between consular and diplomatic protection as well as the legal nature of consular protection.

In relation to the first point, a significant number of Member States as well as academics and lawyers were of the opinion that Article 20 covers consular protection but not diplomatic protection. The Commission was called to clarify this point.

As far as the legal nature of consular protection is concerned, the majority of Member States pointed out that Article 20 simply sets out an obligation of non-discrimination but does not create any right of assistance. Conversely, representatives from civil society, the business sector and other stakeholders were of the opinion that Article 20 creates an entitlement.

### ***Inclusion of provisions protecting EU citizens working and living in third countries in Member States' bilateral agreements***

#### Actions proposed by the Commission in the Green Paper:

Include in Member States' bilateral agreements with third countries provisions protecting Union citizens working and living in third countries, in order to apply Decision 88/384/EEC properly.

The majority of stakeholders responded positively as regards the inclusion in Member States' bilateral agreements, of provisions to protect EU citizens working and living in third countries. This was also considered necessary for the proper application of Decision 88/384/EEC. In their contributions, the Member States considered such measure as a tool fostering the protection of EU citizens in third countries. Luxembourg expressed a particularly strong interest towards this measure. From the business sector, the ECTAA (the Group of National Travel Agents' and Tour Operators' Associations) and GEBTA (the Guild of European Business Travel Agents), particularly welcomed the proposal of the Commission to improve the protection of EU citizens working and living in third countries.

### ***Extension of consular protection to Union citizens' family members who are third country nationals***

#### Actions proposed by the Commission in the Green Paper:

Extend consular protection to Union citizens' family members who are third country nationals, by appropriate means (amend Decision 95/553/EC or Commission proposal on the basis of Article 22 EC).

The majority of stakeholders also expressed a generally positive opinion regarding the extension of consular protection to Union citizens' family members who are third country nationals. Some respondents (Member States and other stakeholders), nevertheless, pointed out that further clarification about who would qualify as a family member would be necessary. It was considered important to clarify whether the proposal intends to protect only immediate family members or a broader spectrum of family relations.

However, three Member States (France, Ireland and the United Kingdom) were opposed to this suggestion. For them, the measure would imply high costs linked to its implementation which could not be covered by current resources. They would prefer to look at each case individually.

***Include the identification and repatriation of remains in Decision 95/553/EC***

Actions proposed by the Commission in the Green Paper:

Amend Decision 95/553/EC in order to include the identification and repatriation of remains.

The European Economic and Social Committee supported the proposal to extend the protection provided to include the identification and transfer of corpses of EU citizens and members of their families who do not have EU citizenship. Other stakeholders did not comment on this specific issue.

***Recommend Member States to accede the Council of Europe Convention of 1973 on the transfer of corpses***

Actions proposed by the Commission in the Green Paper:

Recommend Member States which are not yet contracting parties to the 1973 Strasbourg Convention to accede to it.

Those stakeholders, who did respond to this particular recommendation, did so positively.

Slovenia pointed out that since the 1973 Strasbourg Convention had come into force, the bureaucratic procedures for the transfer of corpses were less complicated and subsequently faster. A representative of the business sector (the European Federation of Funeral Services) suggested that the Commission recommend that Member States enact a "simultaneous ratification" of three existing Conventions on the subject: the 1937 Berlin Convention on the transfer of corpses, the 1973 Strasbourg Convention on the transfer of corpses and the 1983 Strasbourg Convention on the creation of funds for assistance to victims abroad.

***Simplify procedures for repatriating remains***

Actions proposed by the Commission in the Green Paper:

Simplify procedures for repatriating remains.

Most of the stakeholders shared the Commission's concern to enable a quick and simple repatriation of mortal remains. The United Kingdom referred to the case of the 2004 Asian tsunami where the repatriation of mortal remains was handled exclusively by international teams, sparing families the complexities and cost of repatriation themselves. France stressed that it would be necessary to reach a harmonisation of practises and procedures of repatriation of victims within the EU. All the respondents also agreed that the procedures, as they stand, are quite burdensome and lengthy.

In order to simplify these complex procedures, the European Federation of Funeral Services proposed to include a special "laissez-passer" EU standard-document for the transfer of corpses in the Handbook of the EU borders-guards as well as in the Consular Handbooks. ". However it was left unclear whether the EFFS refers to the already existing "laissez-passer" (included in the Annex of the Council of Europe Convention of 1973 on the transfer of corpses) or to a new document.

### ***Set up a European compensation system***

#### Actions proposed by the Commission in the Green Paper:

With regard to the costs of repatriating remains, a complementary action could be to set up a European compensation system.

The respondents, in general, expressed a positive view regarding the creation of a European compensation system **for the costs of repatriating remains**. Only Ireland specified that the system should remain within the responsibilities of the Member States.

### ***Development of DNA analysis tools***

#### Actions proposed by the Commission in the Green Paper:

Encourage research and development of DNA analysis tools and encourage some European laboratories to specialise in victim identification.

Member States and academic stakeholders encouraged further research and development into DNA identification techniques which are less costly than those currently available. France proposed that some common lines of action amongst Member States could be developed on the basis of the Interpol guidelines setting up some common standards in the field of research and the development of DNA analysis tools.

### ***Simplify procedures for financial advances***

#### Actions proposed by the Commission in the Green Paper:

Simplify the administrative steps described in Decision 95/553/EC

The majority of stakeholders who gave their view on the proposed simplification of procedures for financial advances paid to distressed EU citizens, responded positively to this measure. However, some Member States (United Kingdom and France) questioned the need for action in this area, as they argued that the actual system put in place by Decision 95/553/EC already effectively ensured the reimbursement of advances provided to distressed citizens.

Within the business sector, organisers of package travel were particularly concerned by possible measures that would be taken where large groups of people must be assisted and/or

repatriated, as they are already subject to various obligations under Directive 90/314 on Package Travel<sup>49</sup>.

Therefore, ECTAA and GEBTA stressed the need for a coordinated approach and close cooperation between travel industry stakeholders and national authorities when evacuation or repatriation is decided.

Furthermore, the travel operators, Studio Immigrazione and the students of the course on Immigration Law of the University of Milan proposed the creation of a central EU budgetary line as a “fund for advance payment” that could be managed by the Common Offices or a compulsory insurance for all tourists travelling abroad.

### 3. Structure and resources

#### *Setting up common offices*

##### Actions proposed by the Commission in the Green Paper:

Initially set up “common offices” in the Caribbean, the Balkans, the Indian Ocean and West Africa.

Publish rules establishing a system of deputising between Member States in third countries.

Organise information campaigns encouraging citizens to register at the common office.

In the long term, common offices could perform consular functions, such as issuing visas or legalising documents.

The proposal to set up common offices was received positively by the majority of stakeholders. In their contributions, the respondents explored the establishment of common offices as a tool to improve the efficiency of the provision of consular assistance to unrepresented EU citizens, as well as to their own nationals. However, some Member States (Poland, France and the United Kingdom) expressed concerns with regards to the implementation of this measure.

In general, Member States welcomed the idea as long as the scope of this action would be complementary with already existing networks and/or coordination activities of Member States. Also, the concept of a ‘common office’, (which according to some countries was left unclear in the Green Paper), was often defined by Member States in a narrower sense. As such, in response to the question of whether these common offices were to include all EU Member States or only a selection, the majority expressed a preference for the latter. In contrast to the contributions made by the public organisations, those made by civil society,

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<sup>49</sup> Article 4 (7) of the Directive provides that when, after departure, the organiser is unable to provide a significant part of the package (which may be the case if there is a natural disaster for example) and that no alternative arrangements are possible or these arrangements are not accepted by the customer for good reasons, the organiser shall, where appropriate, provide the consumer, at no extra costs, with an equivalent transport back to the place of departure or to another return-point to which the consumer has agreed.

the business sector and others defined the concept of common offices in a broader sense; they perceived the common offices as representing all Member States.

### ***Training for Member State officials***

Actions proposed by the Commission in the Green Paper:

Organisation of joint training activities for Member State and Community institution officials on, for example, EU external border checks, repatriation of remains or the right to diplomatic and consular protection.

The majority of respondents were in favour of the Commission organising joint training activities for Member State and Community institution officials on, amongst other things, EU External border checks, repatriation of remains, the right to diplomatic and consular protection as well as effective trial monitoring and the protection of fair trial rights. Questions were raised by Member States about the ability of the Commission to provide such assistance. Three national authorities (Ireland, France and the United Kingdom) argued that the Commission is currently not in a position to deliver such training, as it has no relevant experience. Two Member States (France and the United Kingdom) however suggested that the Commission's role might lie in the organisation of such training and/or mechanisms to promote the identification and exchange of best practices.

#### 4. Consent of third countries authorities

### ***Insert a consent clause in “mixed” agreements concluded with third countries***

Actions proposed by the Commission in the Green Paper:

Insert a consent clause in “mixed” agreements concluded with third countries.

The majority of Member States expressed some concern regarding the Green Paper's proposal to insert a consent clause in “mixed” agreements concluded with third countries. Some Member States (United Kingdom, France, Poland, Slovenia and Luxembourg) questioned the need for including consent clauses in mixed agreements, referring to existing agreements and arrangements between EU Member States and third countries and to Article 8 of the Vienna Convention. The latter allows for consular assistance to be provided to non-nationals where the receiving state has been notified and has been given an opportunity to object. However, none of the Member States addressing this issue has explained the content of already existing agreements, the countries with which such agreements have been concluded nor gave details on the content of the notifications included.

On the other hand, representatives from the civil society, business sector and other stakeholders adopted a more positive view towards the measure.

### ***Getting the consent of third countries for the Union to exercise a duty of protection via the Commission delegations***

Actions proposed by the Commission in the Green Paper:

In the long term: examine the possibilities of getting the consent of third countries for the Union to exercise a duty of protection, via the Commission delegations, in cases relating to Community competence.

The majority of Member States argued against this proposal (especially Poland and France). Two Member States (Luxembourg, Finland), however, gave a positive opinion. Furthermore, the European Economic and Social Committee stated that the Commission delegations in third countries could contribute to consular protection for EU citizens.

Several stakeholders questioned the legal basis for the Commission to exercise consular functions. Some Member States (Poland, Malta, United Kingdom and France) highlighted that the rules and principles established by the Vienna Convention on Consular Relations and customary international law provide for the provision of consular assistance by States, but not by international or intergovernmental organisations.

On the other hand, CEPS highlighted that the delegations are already considered as actors in the 2006 Guidelines on consular protection and that it is nothing extraneous for international law that international organisations, like the Commission, provide assistance to individuals.

**List of contributors:**

**European Institutions**

- European Economic and Social Committee

**Member States: National governments**

- Austria
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Latvia
- Malta
- Poland
- Slovenia

- United Kingdom

#### **Member States: National parliaments**

- France - Sénat
- Lithuania
- Luxembourg - Chambre des députés

#### **Member States: Other authorities**

- Italy - Province Pistoia

#### **Academics**

- CEPS
- Leiden University, The Netherlands - Annemarieke Vermeer-Künzli
- Universidad Complutense de Madrid - Eduardo Vilariño
- Università degli Studi di Milano - Corso di “Diritto degli stranieri”
- Università degli Studi di Milano - Prof. Bruno Nascimbene

#### **Civil Society, Non-Governmental Organisations, Others**

- Berlin, Parti socialiste
- Cabinet d'avocats Adonnino
- Cabinet d'avocats Misson
- Cabinet d'avocats Nikolaos Trovas
- Elian Akl
- European Citizens Action Service - ECAS
- European Federation of Funeral Services
- European Students' Forum (AEGGE)
- European throughout the world (Jean-Claude Séché)
- Fair Trials Abroad
- Finland Society and Finnish Expatriate Parliament
- FoRS - Czech Forum for Development Cooperation
- Group of National Travel Agents' and Tour Operators' Associations within the EU (ECTTA) - Guild of European Business Travel Agents (GEBTA)

- Iniziativa europea
- Joint Franco-German Consular Office, North East England and Jean Monnet European Centre of Excellence, University of Leeds
- MATRIX Legal practice
- Mrs Paola Balbo
- Redress
- S.O.S. Rapt Parentaux asbl
- Studio immigrazione sas
- Yestravel Sweden

## ANNEX 2

### **Summary report of the public hearing on the Green Paper on diplomatic and consular protection of Union citizens in third countries**

**Brussels 29 May 2007**

#### **8. INTRODUCTION**

On 29 May 2007, the European Commission organised a public hearing on the Green Paper on diplomatic and consular protection of Union citizens in third countries. The hearing was open to all interested parties and provided a good opportunity to launch a debate on the issue.

The public hearing, which was opened by Commissioner Franco Frattini, was structured around the four main themes developed by the Commission in its Green Paper, namely:

- (1) The information of citizens of the Union on their right to diplomatic and consular protection;
- (2) The scope of protection for citizens;
- (3) The structures and resources required and the need for clear burden-sharing rules and
- (4) The consent of third country authorities.

Each theme was introduced by a moderator and presented by two key-note speakers.

In his opening speech, Vice-President Frattini stressed the importance of diplomatic and consular protection, one of the strategic policies of the Commission for 2007. The ambition of the European Union (EU) is to protect citizens, as well as to strengthen the right to diplomatic and consular protection, which is a concrete expression of EU citizenship as it is one of the rights attached to the citizenship of the Union. It is enshrined in Article 20 of the Treaty establishing the European Community ("Article 20 EC") and has been taken up in Article 46 of the Charter of Fundamental Rights of the EU.

The right to diplomatic and consular protection will become increasingly important, especially for the citizens of smaller Member States, which often dispose of more limited consular and diplomatic networks. Strengthening the right to diplomatic and consular protection will consequently reinforce the common idea of EU citizenship.

There are several reasons for Community action in this policy field:

- The number of Union citizens travelling to third countries is increasing;
- The representation of Member States in third countries is limited;

- Recent events such as the Tsunami, the Lebanon conflict and the Bali terrorist attacks showed the shortcomings of current consular protection;
- Consular protection is not only necessary in times of international crises, but also to solve individual problems;
- A recent Eurobarometer survey showed that the majority of EU citizens are not aware of the right to consular protection; and,
- The Community acquis is limited in this area.

In this context, the Green Paper on diplomatic and consular protection of Union citizens in third countries<sup>50</sup> of November 2006 was adopted. It proposes to strengthen the right to consular protection through several short-term and long-term actions.

Vice-President Frattini concluded his opening speech by saying that Article 20 has remained underdeveloped in comparison with the other citizenship rights enshrined in Part Two of the EC Treaty and that time had come to take action. Vice-President Frattini called on the audience to develop initiatives and stated that the public hearing discussions would be only the first step towards reinforcing this important right. In the course of 2007, the EC will propose a strategic initiative which will include a proposal to print Article 20 EC in passports.

## **9. INFORMATION OF CITIZENS OF THE UNION ON THEIR RIGHT TO DIPLOMATIC AND CONSULAR PROTECTION**

Mr Ivan Voles, the Economic and Social Committee's rapporteur for the Green Paper moderated. The speakers were Mr Javier Moreno Sanchez, the European Parliament's shadow rapporteur for the Green Paper and Mr Michel De Blust, the General Secretary of ECTA-GEBTA (the European Associations of travel agencies).

All three speakers agreed that at present there is a deficit in terms of information and visibility of rights provided by Article 20 of the EC.

Michel De Blust pointed out that there are 80,000 travel agencies in the EU, issuing more than 300 million transport tickets to consumers. Tour operators sell more than 180 million travel packages each year and 80 billion Euros are spent on business travel, including travel to third countries for longer term work.

Javier Moreno Sánchez proposed that in the context of growing tourism, it would be important that general information campaigns targeting the general public are improved and that better information on the implementation of Article 20 is published in the Official Journal, on Member States' websites and disseminated with the help of media and professionals.

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<sup>50</sup> COM(2006) 712.

Giorgio Porzio, Head of Unit within the Secretariat General of the Council, responsible for the "Consular Affairs" working party ("COCON"), recalled that Secretariat General has published a brochure on citizens' rights to consular protection in third countries. This information is available and can be further disseminated using the Internet. The brochure, of which 600,000 copies have been printed, was developed in collaboration with the Member States and describes what citizens can expect in terms of consular protection. The information already exists but its dissemination should be intensified.

The European Citizen Action Service (ECAS) proposed that any information campaign in this area should be a shared effort between the Commission and Member States, criticizing the approach adopted in the Green Paper as being rather centralised. For example, the information on the Schengen agreement is at present effectively managed by the Member States themselves.

A representative from the Province of Pistoia, Italy, stressed the important role that regional authorities should play in the dissemination of information to citizens. The information provided by regional authorities would be more widespread and targeted to the needs of citizens. The physical presence on the territory and the knowledge of structures already in place, such as tourism agencies and economic promotion agencies, are two important advantages for regional authorities.

Javier Moreno Sánchez stressed the need that EU citizens travelling to third countries are made aware of the risks involved. As travel advice is fragmented from one country to another, the Commission's proposal to coordinate the presentation of travel advice was welcomed by both key-note speakers who agreed that the travel advice provided by the Member States needs to be clear and unambiguous.

Michel De Blust held that in the present situation, the existence of unclear indications leaves the citizens confused and makes the work of tour operators very difficult. For example, in 2003, Member States issued different travel advice on the SARS epidemic thus creating confusion amongst the public. The ECTA-GEBTA would therefore welcome common guidelines in this area.

While there was general agreement that travel advice needs to remain a competence of the Member States, as it is a highly political issue, it was also agreed that some degree of coordination would be useful with regard to its presentation. This approach was supported by the UK and Irish representatives who stressed that there should be no harmonization of travel advice.

Several participants expressed critical views on the poster on consular protection presented by the Commission. The French representative claimed that the poster contained legal errors and argued that the Commission should have consulted Member States before publication, since they which remain solely responsible for providing consular protection. The Portuguese delegate pointed out that the Commission's poster, by making reference to diplomatic protection, was misleading and that it is up to Member States to decide on the type of consular protection which should be given to citizens.

The Danish representative welcomed the Green Paper and the actions proposed by the EC, stressing that synergies should be sought between the different EU initiatives i.e. crisis management, consular protection and humanitarian cooperation.

The suggestion of printing Article 20 in passports was welcomed by the majority of stakeholders attending the public hearing as an important step to increase awareness of the citizens. It was also proposed to explore the possibility to include a reference in passports to a "hotline" telephone number where citizens could obtain information e.g. on consular services or an interpreter in times of crisis should also be explored. This solution was put forward by both Javier Moreno Sánchez, and by Michel De Blust who suggested that part of such a system could be computerised.

Michel De Blust added that printing Article 20 EC in passports could be of use not only for citizens but also for consular officers, in particular for smaller consular offices in third countries which may not be aware of their obligation to assist unrepresented EU citizens.

The Irish authorities were against printing Article 20 EC in passports. With each passport delivered, Ireland already provides an information pack which includes a document describing the citizens' rights under Article 20 EC.

The representatives of The Confederation of National Associations of Expatriates stressed that special attention should be given to those residing permanently abroad and that European expatriates should also be targeted by the information campaign. European citizenship means that the same rights should apply to all EU citizens regardless of where they live.

Ivan Voles added that it is important that attention is not exclusively given to the needs of tourists, as they are already assisted by travel agencies, but to aid workers, humanitarian workers and other people travelling for business, as these are much more vulnerable. He held that the Green Paper did not pay sufficient attention to these citizens.

## **10. THE SCOPE OF PROTECTION FOR CITIZENS**

Mr Giorgio Porzio, Head of Unit within the Secretariat General of the Council, responsible for the "Consular Affairs" working group, moderated. Andreas von Mettenheim, Deputy Director General of the German Ministry of Foreign Affairs and President of the COCON working group, and Mr Enrique Baron Crespo, President of the association 'The Europeans throughout the world' were the speakers.

Although not specifically addressed by the Green Paper, the majority of participants at the hearing stressed that it is necessary to make a clear distinction between consular and diplomatic protection. The Centre for European Policy Studies (CEPS) invoked the ongoing debate at international level whether Article 20 EC does in fact comprise both consular protection as well as diplomatic protection. Diplomatic protection is understood as a remedial inter-state intervention, which applies when an individual has suffered an internationally wrongful act committed by another state, and the individual has exhausted all available local remedies. By comparison, consular assistance is provided on request to individuals who find themselves in difficulties in a foreign state. These difficulties may be

the result of criminal charges or detention in the foreign state, a serious accident or illness, natural disasters or similar incidents. The crucial difference with regard to Article 20 is that according to the contemporary (but also disputed) understanding of international law, only consular assistance may be rendered by a state other than the state of nationality.

Andreas von Mettenheim pointed out that in practice consular protection of other EU citizens seems to work well in practice but that its scope should ideally be extended and harmonised to a degree. Member States should agree on certain cases in which consular protection must be provided. He held that it would be easier to provide protection to EU citizens in third countries if all Member States provided the same assistance to citizens whereas at present, there are some Member States that provide assistance to refugees, while others do so in the case of long-term third country residents and family members.

A number of participants also pointed out that there is a strong need to take expatriates' protection into consideration. Enrique Baron Crespo, estimated that there are about 50 to 80 million EU citizens working and living in third countries. Greece, Ireland and Portugal in particular have a significant diaspora.

The representative of Fair Trials Abroad (FTA), a Non-Governmental Organisation, assisting EU nationals in prison in third countries, stressed that difficulties arise due to the existence of discrepancies in the assistance provided by different Member States as there are no consistent standards with regard to consular assistance provided by Member States. For example, an EU national in immigration detention in Thailand would be subject to different treatment depending on his/her nationality: in the UK the process of providing new identity papers and financial advances can take up to six months, while in other Member States people may only have to wait for a few weeks.

FTA emphasized that there is a strong need to set minimum standards and put in place uniform practices to guarantee the same level of protection which should go well beyond what Article 20 offers.

The question of family members of EU citizens who are third country nationals is of vital importance in the debate on the scope of consular protection. Both Enrique Baron Crespo and Javier Moreno Sánchez proposed that protection should be extended to third-country family members of EU citizens.

There is a growing number of "mixed families" (i.e. an EU citizen married to a third-country national) which travel within and outside the EU and who need consular protection. This is therefore an important and transversal issue which was raised by Massimiliano Renna, lawyer and professor at the University of Pisa who suggested that Decision 95/553/EC should be modified to extend the scope of consular protection to third-country family members of EU citizens.

## **11. THE STRUCTURES AND RESOURCES REQUIRED AND THE NEED FOR CLEAR BURDEN SHARING RULES**

Christian Berger, Head of the Crisis Management and Conflict Prevention Unit within the Commission's DG for External Relations, moderated. The speakers were Alexandros Zenon,

permanent Secretary of the Ministry of Foreign Affairs of Cyprus and Michel Barnier, former French Minister for Foreign Affairs and former member of the European Commission.

Christian Berger stressed that it is important to carefully examine the added value and risks which increased cooperation between Member States entails. He also recalled that one must draw a clear distinction between consular protection in times of crises and in normal situations and that it is crucial to examine what legal bases exist for further action in the field.

Michel Barnier focused on the importance of developing a European civil protection force and outlined the proposals which were made in his report, presented in May 2006 and entitled "For a European civil protection force: Europe aid". Such proposals included the pooling of consular resources which would include greater cooperation between Member States' representations, Commission delegations and the Council Presidency; the setting up of a European consular code as well as the printing of Article 20 TEC in passports.

He recalled that the report proposed the setting up of "European consulates" in four experimental regions where there is a reduced number of representations and a large number of EU tourists (the Caribbean, the Balkans, the Indian Ocean and West Africa). These common offices would be a useful solution, especially for smaller countries with limited consular and diplomatic networks worldwide.

Furthermore, Mr. Barnier proposed the establishment of a European fleet comprising large airplanes for the evacuation and repatriation of EU citizens and their families and proposed that the solidarity fund set up in 2002 could be used to this end.

Alexandros Zenon stated that it is not possible for smaller states to have representations in the majority of third countries. He expressed gratitude to other bigger Member States providing consular assistance to Cypriot citizens in countries where Cyprus is not represented, giving the example of the Tsunami, when Greece and Italy helped in evacuating Cypriot citizens.

He emphasized that the creation of common offices would lead to financial savings for all the Member States. However, several practical and financial considerations have to be addressed before moving forward to the creation of pilot common offices. It is important that a clear distribution of tasks and burden sharing agreements between Member States are first put in place. There is also a need to carefully examine what type of assistance would be provided to EU distressed citizens, irrespective of their nationality. Moreover, the idea of the 'Lead State', discussed in COCON, needs to be developed further.

The importance of crisis prevention was brought up by 'Europeans throughout the world' which proposed enhanced information exchange between consular officers, NGOs and professionals in what can be called a "preventive crisis network". Effective crisis prevention can be achieved through the evaluation of existing resources, the capitalisation of lessons learned, the analysis of best practice and the development of cooperation between different actors (national, consular authorities, civil society and the business sector). The European Federation of Funeral Services mentioned that it is important to involve professionals with relevant knowledge.

Michel Barnier added that the role of professionals in crisis prevention should not be underestimated. National authorities and the Commission should work together with professionals to develop common strategies which should be implemented on the ground.

REDRESS, an NGO providing legal assistance to torture survivors, claimed that EU citizens imprisoned in third countries often complain about the quality of consular services received.

As far as training is concerned, Mr Andrew Robinson on behalf of the joint Franco-German consular office mentioned that technology can fill in various gaps in consular presence and that training for consular officials should remain in the Member States ambit but that a European dimension should be added to training programmes by including subjects such as the Hague Programme, Schengen, border control etc.

## **12. THE CONSENT OF THIRD COUNTRY AUTHORITIES**

Mr Francisco Fonseca Morillo, Director within DG Justice, Freedom and Security moderated and the two speakers were Jean-Pierre Puissochet former judge at the European Court of Justice, and Fausto Pocar, president of the International Criminal tribunal for the former Yugoslavia.

It is a general principle of international law that the protection of a citizen of one state by another state is subject to the third country's consent. Articles 45 (c) and 46 of the Vienna Convention on Diplomatic Relations 1961 and Article 8 of the Vienna Convention on Consular Relations of 1963 establish the requirement of the prior consent of a receiving State in order to exercise consular and diplomatic functions on behalf of a third State. In order to obtain this consent, each Member State is expected to initiate bilateral negotiations with third countries. However, in the present situation, it is unclear whether the consent of third countries as to the protection set up by Article 20 has ever been given, or whether Article 20 and Decision 95/553/EEC have been notified to the authorities of third countries.

Mr. Jean-Pierre Puissochet first made a distinction between diplomatic and consular protection. Diplomatic protection is always discretionary as the State is not obliged to endorse the citizens' request while consular protection is a citizens' right meaning that such assistance should always be provided. He considered the Green Paper's proposal to insert a consent clause in "mixed" agreements with third countries interesting, but that the consent can also be obtained in a less formal way. Nevertheless this could lead to increased disparity between third countries which would be subject to agreements and others that would not. Furthermore, the possible inclusion of consent clauses in agreements could introduce new pressures and difficulties in the negotiation process. It is difficult to estimate what the impact of this type of clauses on negotiations with third country would be.

Mr. Fausto Pocar considered that the consent of third countries can be obtained in different ways: through bilateral or multilateral agreements as well as through simple notification. He raised several questions regarding the content of a future consent clause, e.g. whether a consent clause would have to specify which country will take on the consular protection of other EU citizens or whether all represented Member States would take on this role and whether such a clause should refer only to consular protection or mention also diplomatic

protection. How could diplomatic protection be offered by a Member State to an individual who has a different nationality?

United Kingdom stressed that the national authorities are not aware of any examples where third countries have rejected the proposal to provide assistance to other EU citizens; it would be therefore important to know if cases of denied authorisation from third countries exist in practice.

The French representative pointed out that France has already used the practice of notification to third countries. According to Article 8 of the Vienna Convention, the French government has notified Chad that it will be representing the 26 Member States in the country and will be responsible for all EU citizens in case of crisis. Furthermore, the 26 Member States have notified Chad that they will be represented by the French authorities. The French authorities stated that the practice of notification seems to work well on the ground.

Mr. Puissochet raised some questions with regard to the Green Paper's proposal to examine the possibility of obtaining the consent of third countries for the Union to exercise a duty of protection via the Commission delegations. In principle, the Commission delegations have a different function than the one described in the Green Paper. The Community has exclusive competences in different policy fields, such as the law of the sea or security in transport of nuclear material. In these cases, third countries have given their consent to the Community to exercise its powers. Nevertheless, the situation in the field of consular and diplomatic protection is completely different and still under the direct responsibility of Member States. Mr. Fausto Pocar believed that international law leaves the door open for such a proposal.

### **13. CONCLUSION**

During his closing speech, Jonathan Faull, Director General of DG Justice, Freedom and Security emphasized that developing the field of consular and diplomatic protection for EU citizens forms part of the Commission's strategic programme for 2007. He assured the participants that the Commission bears in mind the principle of subsidiarity, which plays an important role in the discussions about future developments in the area of consular and diplomatic protection. What the Union could do in the field thus depends on what evidence can be gathered with regard to the potential added value of EU action.

The Commission will work together with the Member States, bearing the principle of subsidiarity constantly in mind. However, as the discussions during the public hearing confirmed, it is important to stress that consular and diplomatic protection is an element of European citizenship, which should be developed and strengthened.

### ANNEX 3

## **Summary of Member States' replies to a questionnaire on consular and diplomatic protection**

### **1. REPLIES FROM MINISTRIES OF FOREIGN AFFAIRS**

Table 1. Number of citizens travelling and living in third countries and scale of problems encountered by citizens in third countries

Table 2. Nature of problems encountered by citizens travelling and living in third countries

Table 3. Legislation on consular protection, including the transposition of Decision 95/553/EC into national legislation

Table 4. Scope of consular protection

Table 5. Consular services provided to citizens in third countries

Table 6. Information to citizens on Article 20 EC

### **2. REPLIES FROM MEMBER STATES' REPRESENTATIONS IN THIRD COUNTRIES**

Table 7. Number of citizens travelling and living in third countries and scale of problems encountered by citizens in third countries

Table 8. Nature of problems encountered by citizens travelling and living in third countries

Table 9. Consular services provided to citizens in third countries

### 3. REPLIES FROM THE MINISTRIES OF FOREIGN AFFAIRS

#### 1. Number of citizens travelling and living in third countries and scale of problems encountered by citizens in third countries

Country	Number of nationals travelling to third States	Trends since 2000	Number of your nationals working and living in third States	Trends since 2000	Number of nationals who have encountered problems while travelling to third States	Trends since 2000	Number of nationals working and living in third States that have encountered problems	Trends since 2000
Austria	2000: 6,180,000 2003: 6,620,000 2005: 6,560,000		2005: 450.000	Increased	2000: 1.416 2003: 2.113 2005: 2.680	Increased	NA	Static
Bulgaria	NA	Increased	NA	Increased	NA	NA	NA	NA
Denmark	NA	Increased	NA	Increased	N/A	Increased	NA	Increased
Estonia	NA	NA	2005: 27,000 2000: 9,000	Increased	2003: 101 (loss of passport), 35 (other consular assistance)  2005: 175 (loss of passport) and 120 (consular assistance).	Increased	NA	NA
Finland	2000 <sup>51</sup> : 390,000 2003: 330,000 2005: 440,000	Increasing	No statistical data	Static	1,600 <sup>52</sup>	Increased	NA	NA

<sup>51</sup> The figures are based on the Finnish Travel Survey by Statistics Finland. The Finnish Travel Survey is composed of two separate sample-based telephone inquiries. The sample persons represent the population aged 15 to 74 permanently resident in Finland.

<sup>52</sup> This number does not include administrative services delivered to expatriates, such as services related to citizenship, parenthood, marriage, national service, or legalisation of documents. Furthermore, the number does not include official assistance to other branches of administration.

Country	Number of nationals travelling to third States	Trends since 2000	Number of your nationals working and living in third States	Trends since 2000	Number of nationals who have encountered problems while travelling to third States	Trends since 2000	Number of nationals working and living in third States that have encountered problems	Trends since 2000
Germany	70.000.000 <sup>53</sup>	NA	No statistical data about Germans living permanently abroad	Increased	No statistics available	NA	No statistics available	NA
Hungary	2000 11.619.992 2003 14.941.827 2005 18.823.870 <sup>54</sup>		Data not collected	Increased significantly	Cannot provide figures	Increased	Cannot provide figures	Increased
Malta	2001: 34 466, 2003: 45, 216, 49 783, 2005: 49,783 (air travel only)	NA	Such figures are difficult to produce as nationals do not normally register with Embassies or Consulates when they take up residence in a foreign country. Figures may also be distorted by a significant number of dual nationals	NA	Less than 50 a year	NA	NA	Static
Lithuania	2000: 1 975 000 2003: 1 995 000 2005: 2 100 000	Increased	N/A	Increased between 15-20%	2005: Theft and lost of passports :857 Accidents :111 Death :109	N/A	N/A	Static

<sup>53</sup> Not aware of statistical data differentiating between Germans travelling inside the European Union and those travelling to third countries.

<sup>54</sup> Although the Hungarian Ministry do not register the number of citizens entering third States, the following statistics have been compiled on the number of Hungarian nationals leaving Hungary

Country	Number of nationals travelling to third States	Trends since 2000	Number of your nationals working and living in third States	Trends since 2000	Number of nationals who have encountered problems while travelling to third States	Trends since 2000	Number of nationals working and living in third States that have encountered problems	Trends since 2000
Netherlands	2000: 13.896.000 2003: 16.463.000 2005: 17.086.000	Increased	Approximately 700.00	Increased	NA	Increased	NA	Increased
Poland	2000: 57 million 2003: 39 million 2005: 41 million	Fluctuating	2003: 3,227,000 Poles and 3,742,000 Polish nationals	Increasing	2000: 30,323 2003: 35,000 2005: 40,000	Increased	(included in statistics given for citizens travelling)	
Portugal	No statistics available	Increasing	2000 : 3.420.000 2003 : 3.344.000 2005 : 3.403.600	NA	About 5.000 a year	Static	No separate statistics concerning citizens living in third states	NA
Slovakia	2000: 190,526 with travel agencies, 17,149, 057 through border checkpoints, 2003: 221,763 with travel agencies, 15,406,356 through border checkpoints, 2005: 296,111, with travel agencies, 940, 636 through border checkpoints.	NA	2005: 414 persons	NA	NA	NA	NA	NA
Slovenia	2005: 3,9	Increased	2005: 450.000	Static	Cannot	NA	Cannot	NA

Country	Number of nationals travelling to third States	Trends since 2000	Number of your nationals working and living in third States	Trends since 2000	Number of nationals who have encountered problems while travelling to third States	Trends since 2000	Number of nationals working and living in third States that have encountered problems	Trends since 2000
	million private travels				provide figures		provide figures	
United Kingdom	2003-2004: 15,353,290 2005-06: 23,870,417	Increasing	2003-04 – 12,805,014 2004-05 – 11,298,163	Decreasing	2003-04: 49,153 2005-06: 46,053	Decreasing	(included in statistics given for citizens travelling)	

#### 4. NATURE OF PROBLEMS ENCOUNTERED BY CITIZENS WHEN TRAVELLING AND LIVING IN THIRD COUNTRIES

Country	Most common problems encountered by citizens travelling to third States	Most common problems encountered by citizens working and living in third States
Austria	Accidents, financial emergencies, loss and theft of passports and money	Accidents and death
Bulgaria	Loss of passport, accidents, theft or death.	Accidents, including death.
Denmark	Accidents, death, loss of passport, theft	Accidents, death, loss of passport, theft
Estonia	Loss of passport, theft, financial assistance, accidents, deaths.	Loss of passport and theft.
Finland	Loss of passports, theft or robbery, injury or illness, death and arrest or imprisonment.	Data of consular assistance does not differentiate between temporary and permanent residents abroad. Loss of passports, theft or robbery may be proportionally less numerous than with travellers, whereas injury or illness may be proportionally more numerous than with travellers, but this cannot be verified.
Germany	Theft is the most often encountered problem. Accidents with casualties are less common	In most cases the problems are the same as those encountered by travellers. The difference is that consulates and consular sections of embassies function as a conglomerate of all German offices and authorities

Country	Most common problems encountered by citizens travelling to third States	Most common problems encountered by citizens working and living in third States
		and have to provide – with some exceptions - all services a citizen could get at home.
Hungary	Loss of passport in the first place; further death, arrest and detention, criminal cases and accidents.	Expired and lost passports in the first place, further arrest, criminal cases and accidents. Citizens being employed illegally or taking on illegal work, or lack of health insurance, and the non-fulfilment of the provisions of the labour contract (by the employer).
Malta	Theft.	NA
Lithuania	Theft and lost of documents passports; Accidents; Death.	Lost and expire date of validity of passports; Accidents; Death.
Netherlands	Accidents, death, loss of passport, detention	Accidents, death, loss of passport, detention
Poland	Loss of financial resources and/or passport. Other: crime and sudden sickness or death (less often)	Same as citizens travelling
Portugal	Accidents, theft and loss of documents	Accidents on the workplace or road accidents, death and expire date of validity of travel documents
Slovakia	Loss/theft of documents and of money is the most frequent problem.	No information
Slovenia	Loss and theft of passport or travel documents, accidents, detention and/or imprisonment	Issuing new passports, administration procedures (registration of births, changes in personal status), legalization of documents.
United Kingdom	NA	NA

## 5. LEGISLATION ON CONSULAR PROTECTION, INCLUDING THE TRANSPOSITION OF DECISION 95/553/EC INTO NATIONAL LEGISLATION

Country	Legal basis for consular protection under national law	Transposition of Article 20 into national legislation	Transposition of Decision 95/553/EC into national legislation	Publication of transposition of Decision 95/553/EC
Austria	In Austria there is no law on consular protection.	Section 18 para. 1 (1) of the Federal Law on the Functions and the Organisation of the Foreign Service –	The concrete transposition was carried out through corresponding directives/circulars to	Decision of 19 December 1995 regarding the protection of citizens of the European Union

Country	Legal basis for consular protection under national law	Transposition of Article 20 into national legislation	Transposition of Decision 95/553/EC into national legislation	Publication of transposition of Decision 95/553/EC
		<p>Statute (Federal Law Gazette I No. 129/1999) states the duty of foreign service officials to provide consular protection to EU-citizens where required.</p> <p>Article 20 EC was published by Austria in the Federal Law Gazette III No.86/1999 and is directly applicable. The concrete transposition of the responsibilities entailed in Article 20 EC was carried out through corresponding directives/circulars to Austrian representations abroad.</p>	Austrian representations abroad.	by diplomatic and consular representations (95/553/EC) was published in the Federal Law Gazette III No.254/2002.
Bulgaria	The Vienna Convention on Consular Relations, bilateral consular conventions (Bulgaria has signed such conventions with 41 countries), the Statute of the MFA.	It has been transposed with the Treaty on the Accession of the Republic of Bulgaria to the EU, which is part of our national legislation.	It has not been transposed yet but is under consideration.	No
Denmark	The right to consular protection is provided by the Law on the Foreign Service. We normally use the term consular services or consular assistance rather than consular protection.	Article 20 was transposed in accordance with the Danish Law on the Foreign Service, which provides the Minister of Foreign Affairs the powers to regulate the operations of the Danish Foreign Service through the "Instructions for the Danish Foreign Service". Article 20 is reflected in these instructions.	The Decision was transposed through a revision of the Instructions for the Danish Foreign Service.	No it has not been published in any official Danish journal
Estonia	The right to consular protection is provided by the Consular Law	It was transposed through law (Consular Act).	It was transposed through law (Consular Act).	Yes

Country	Legal basis for consular protection under national law	Transposition of Article 20 into national legislation	Transposition of Decision 95/553/EC into national legislation	Publication of transposition of Decision 95/553/EC
Finland	<p>The right to consular protection is provided by the Law 498 of 22.04.1999 on consular services.</p> <p>The extent of the service depends, however, on the mission's concrete conditions and possibilities</p>	<p>The TEC is incorporated in the Finnish first degree legislation as such</p>	<p>In the Finnish constitutional framework, Council decisions are treated as international treaties in a simplified form, and they can be accepted by a decision by the MFA. It has thus been incorporated in the Finnish legislation</p>	<p>It has not been published in Finland's official journal (Virallinen lehti), but it has been published in the Official Journal of the EC (L 314 , 28/12/1995 s. 0073 - 0076)</p>
Germany	<p>German consular aid is based on the Consular Law of 1974. The application is regulated in the consular instructions.</p>	<p>Article 20 is part of the consular instructions, which are the basis of all consular work of German Consulates and Consular Sections of Embassies abroad.</p>	<p>Part of the consular instructions</p>	<p>NA</p>
Hungary	<p>On the basis of Article 69. of the Constitution all Hungarian citizens are entitled to enjoy the protection of the Republic of Hungary while legally residing or staying abroad.</p> <p>Act XLVI of 2001 on consular protection and Decree No. 17/2001. (XI.15.) KüM on the implementation of Act XLVI provide the legal framework for consular protection, further elaborated by several other decrees, namely, Decree No. 1/1991 (IV.9.) KüM on consular fees and Decree No. 1/2002 (1.23.) KüM on rules of execution concerning consular documents and certificates.</p>	<p>Article 3. (4) of Act XLVI of 2001 on consular protection provides the framework for the consular protection of unrepresented EU nationals.</p>	<p>Decision 95/553/EC has been transposed by Decree 5/2006. (X.2.) KüM and has been incorporated into Decree No. 17/2001. (XI.15.) KüM on the implementation of Act XLVI. on consular protection. Articles 14/A-H set out the detailed provisions of the consular protection of unrepresented EU nationals.</p>	<p>It has been published in Magyar Közlöny Vol. 121., dated 02.10.2006.</p>
Malta	<p>Consular protection does not have a basis in national legislation and is not granted as a legal right.</p>	<p>NA</p>	<p>NA</p>	<p>NA</p>
Lithuania	<p>The right to consular protection and consular</p>	<p>Article 20 EC has been transposed in the</p>	<p>Lithuanian national consular law- Consular</p>	<p>The transposition of decision 95/553/EC</p>

Country	Legal basis for consular protection under national law	Transposition of Article 20 into national legislation	Transposition of Decision 95/553/EC into national legislation	Publication of transposition of Decision 95/553/EC
	assistance is provided by the Lithuanian national consular law modifying the Consular Statue, 25/05/2006.	Lithuanian national consular law Consular Statue, art. 2, par. 3 and chapter IV (art. 41 and art. 42).	Statue, art. 2, par. 3 and chapter IV (art. 41 and art. 42) contains rules and stipulations, under which consular assistance and protection by Lithuanian consular posts and diplomatic missions could be provided to the citizens of the European Union.	has been published in brochure and provided to the State Tourism Department, travel agencies, airports and information placed on the website of the Ministry of Foreign Affairs.
Netherlands	A right to consular protection has no national legal basis but can be derived from international legislation, laid down in Article 20 EC and in Decision 95/553/EC.	Nor Article 20 or Decision 95/553/EC have been transposed in national law.	Nor Article 20 or Decision 95/553/EC have been transposed in national law.	NA
Poland	The Constitution of the Republic of Poland of 2 April 1997, article 36	No. But transposition of art. 8 of Vienna Convention on Consular Relations	No. However, circulars directed to consular officials fully endow Polish consuls with knowledge and necessary instrumentation to fulfil obligations arising from the Decision.	No
Portugal	Decree-Law n.º 162/2006, of 8 August	International treaties have priority over national law according to the Portuguese Constitution	Decree n.º 38/97 of 23 July	Yes, it was published in the Official Journal
Slovakia	Act No. 575/2002 on powers of the Ministries, which in § 14 stipulates, that the Ministry of Foreign Affairs of the Slovak Republic provides protection of rights and interests of the Slovak Republic and its citizens abroad. Vienna Convention on Consular Relations (1963) published in Collection of Laws	Art. 7, par. 2 of the Constitution stipulates, that legislative acts of the EU and EC are prior to the legislative Acts of the Slovak Republic. The stipulation of the Treaty Establishing EC and Decision 95/553/EC are in Slovakia legally binding.	Decision 95/553/EC has been transposed in the national Constitution, art. 7, par.2	It's not necessary in Slovakia Decision is valid without the publication (see The Constitution, Art. 7. par. 2)

Country	Legal basis for consular protection under national law	Transposition of Article 20 into national legislation	Transposition of Decision 95/553/EC into national legislation	Publication of transposition of Decision 95/553/EC
	(Official Journal) under the No 39/1969.			
Slovenia	The right to consular protection is provided by the Law on external affairs – 20/11/03	Through the Constitution which was amended in 2003.	Through amendment to the Foreign Affairs Act, which is currently in preparation	It will be in autumn 2007 when the amendment to the Foreign Affairs Act will be adopted by the Parliament. All laws are published in the Official Gazette of Slovenia pursuant to our Constitution.
United Kingdom	There is no general legal right to consular assistance under UK law. Consular assistance is provided to British nationals abroad as a matter of policy.	The UK European Communities Act 1972 gave legal effect to the TEC without the requirement of further legislation.	The UK applies Decision 95/553/EC as a matter of policy. There is no national legislation to be affected by the Decision.	No
Greece	The Vienna Convention for Consular Affairs of 1963 (Articles 5 and 36 para b)  The MFA Regulation (Law No. 3566/2007, Article 52 para a).	The protection of EU citizens is included in the duties of the consular missions according to Article 2 of the national law No. 2964/2001.	Decision 95/553/EC has been integrated into Greek law by Law No. 2964/2001. According to Article 2 of the said law, the protection of EU citizens according to Article 20 EC is included among the duties of consular missions.	Official Gazette A, 280, Law No 2964/2001.

## 6. SCOPE OF CONSULAR PROTECTION

Country	Right for the citizens to appeal in case of refusal of consular protection / system to lodge complaints	Consular protection extended to EU and third country long-term residents	Consular protection extended to family members who are not nationals
Austria	No	Only Austrian nationals and EU-nationals enjoy consular protection	Generally not
Bulgaria	No	Reserved to Bulgarian nationals only	No
Denmark	Denmark does not refuse consular assistance. Complaints about inadequate assistance are handled by the MFA. As a last resort, a complaint can also be lodged through the legal system.	Consular assistance to Danish citizens and other persons holding a valid Danish residence permit.	Consular assistance to all family members holding a valid Danish residence permit.
Estonia	Citizens can report or complain by writing to the administration responsible, contact ombudsman or go to court	Consular protection is extended to EU nationals, and also to the owners of Estonian passports.	No
Finland	The citizens may appeal as stipulated by the Hallintolainkäyttölaki (586/1996) (Administrative Judicial Procedure Act)	It is extended to all permanent, legal residents of Finland	Conditionally yes, on the basis of the missions' discretion. However, according to the Konsulipalvelulaki (Consular Services Act, 498/1999) the extension only applies to (1) services in crisis situations and (2) notarial services.
Germany	If a German citizen applies for consular aid in a written form and is refused consular aid he has the right of appeal at court.	Consular protection is limited to German citizens and their family members (wife/husband and children) no matter of their nationality.	Consular protection is limited to German citizens and their family members (wife/husband and children) no matter of their nationality.
Hungary	Decisions based on Act CXL of 2004 on the General Rules of Administrative Proceedings and Services can be appealed to the competent body of second instance and then to the court vested with the competence to act in administrative matters. Refusal of financial assistance and refusal to issue a travel document are types of decisions always made on	Under Article 3 of Act XLVI of 2001, consular protection is reserved to Hungarian nationals. Nevertheless, in accordance with subparagraph 3 of the same Article, on the basis of an international treaty or by virtue of reciprocity, the Hungarian consular service may provide consular protection for unrepresented citizens of third states, on	No, in accordance with Article 3. of Act XLVI of 2001 on consular protection consular protection does not extend to family members who are not Hungarian nationals.

Country	Right for the citizens to appeal in case of refusal of consular protection / system to lodge complaints	Consular protection extended to EU and third country long-term residents	Consular protection extended to family members who are not nationals
	<p>the basis of this Act.</p> <p>Decisions under Act XLVI of 2001 on consular protection (eg. assistance in case of imprisonment) can be appealed to the Minister for Foreign Affairs.</p> <p>Complaints based on Article 64 of the Constitution and Article 141 (2) of Act XXIX of 2004 on Amendments and Repeals of Legal Regulations and other Legislative Changes Related to Hungary's Accession to the European Union, can be addressed to the competent authority (thus in this case to the MFA), provided that the matter cannot be dealt with in the framework of administrative or court procedures.</p>	<p>condition that the receiving state does not object.</p> <p>Unrepresented EU nationals are also entitled to consular protection on the same basis (cf. questions nr. 8-9 above).</p> <p>Third country long-term residents who lose their passports are entitled to apply for a travel document valid for a single return journey to Hungary.</p>	
Malta	<p>There is no legal framework for consular protection but this does not mean that citizens cannot institute a formal complaint or legal representations against the State for what is perceived to be lack of consular assistance. The issue has never been tested in a court of law.</p>	<p>Each case is treated on its own merits.</p>	<p>Although family members do not have a right to consular protection each case is treated on its own merits. The humanitarian aspect is always taken into consideration.</p>
Lithuania	<p>There is a right for the citizens to appeal in case of refusal of consular protection. The citizens can lodge his complains or report of refused or inadequate consular protection according to the Public Administration Law (October 1, 2006).</p>	<p>Consular protection (assistance) for nationals covers EU citizens and EU citizens long term residents in third country.</p>	<p>Yes (spouse and child)</p>
Netherlands	<p>No, but the plaintive can fill up a complaint with the authority responsible. If the complainant is not satisfied with the outcome, he then</p>	<p>It is extended to people with a residence permit for the Netherlands. Consular protection in those cases is however limited.</p>	<p>In general not, except in cases of evacuation for first grade relatives (spouses, parents and children). marriages, partnership</p>

Country	Right for the citizens to appeal in case of refusal of consular protection / system to lodge complaints	Consular protection extended to EU and third country long-term residents	Consular protection extended to family members who are not nationals
	can address the (independent) National Ombudsman.		arrangements and children
Poland	It is regulated by section VII of the Code of Administration Procedure. There is an internal circular mandating a log of complaints showing the way they were handled.	Polish law does not restrict consular protection only to citizens of Poland	On a case by case basis Poland extends consular protection to family members who are not nationals. Defining family members we use national civil and family law to ascertain whether an assistance can be extended to a given person.
Portugal	Yes, but only if the refusal of consular protection concerns a service provided by the consular law	Consular protection is provided to Portuguese citizens and to citizens of EU Member States if they have no consular representation on the spot	In principle, consular protection is reserved to Portuguese citizens but family members who are third country nationals are also evacuated in emergency situations
Slovakia	Everyone can complain on not being provided with adequate protection or assistance, but until now it has happened very rarely. Citizens can complain at the Ministry of Foreign Affairs.	Consular protection is provided to the Slovak citizens and to the EU citizens.	It depends on a case and situation. Generally consular protection is provided to Slovak passport holders.
Slovenia	Generally yes, but there has been no such cases yet	Only to nationals and EU citizens under the Article 20 EC.	Depending if the child and the spouse or other family members, who are non nationals, comply with the conditions for entering Slovenia as set in the Law for foreigners
United Kingdom	British nationals who are refused consular assistance may seek judicial review of the decision. The UK also has an internal complaints handling procedure.	The UK does not assist long term residents in normal times.	The UK does not assist relatives of British nationals unless it is in the course of assisting a British national.
Greece	No such case has occurred in Greece. If it occurs, there might be consequences regarding the violation of civil law.	It is reserved to EU nationals.	Consular protection is reserved to EU nationals and Greek citizens.

## 7. CONSULAR SERVICES PROVIDED TO CITIZENS IN THIRD COUNTRIES

Country	Help in Emergency Situations	Financial Assistance	Assistance in case of imprisonment of citizens	Assistance in case of death of the citizen abroad	Replacement of a lost or stolen document	Information about evacuation in case of war or other major crisis	Administrative services for citizens living abroad	Other...
Austria	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Bulgaria	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Denmark	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <sup>55</sup>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Services are subject to fees according to official regulations
Estonia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Finland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Germany	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Hungary	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Malta	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Lithuania	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Netherlands	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <sub>2</sub>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Poland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <sup>56</sup>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Notarial services, vital, statistics registration etc
Portugal	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Slovakia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Not elections
Slovenia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Providing info on visa,

<sup>55</sup> But only as a transfer of funds paid in advance by relatives or others in Denmark

<sup>56</sup> Yes but there is no legal advice provided

Country	Help in Emergency Situations	Financial Assistance	Assistance in case of imprisonment of citizens	Assistance in case of death of the citizen abroad	Replacement of a lost or stolen document	Information about evacuation in case of war or other major crisis	Administrative services for citizens living abroad	Other...
								custom procedures and other administrative procedures
United Kingdom	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <sup>57</sup>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

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<sup>57</sup> The FCO is not qualified to provide legal advice on individual cases, but can provide lawyers lists and general information

## 8. INFORMATION TO CITIZENS ON ARTICLE 20 EC

Country	How do you inform your citizens of their fundamental rights under Article 20 of the Treaty establishing the European Community?	Do you think that your citizens have a good knowledge of their consular and diplomatic rights?
Austria	In 2006, a brochure was issued on this subject by the Secretariat and the MS which was distributed in Austria by way of travel agencies and tourist fairs. As of now no explicit information about Art. 20 on the Ministry website.	Fairly good knowledge
Bulgaria	Inform citizens through the MFA official web site and the Client Chapter.	No
Denmark	Link to MFA website <sup>58</sup>	Yes
Estonia	The information is on web pages, also MFA gives information on tourism fairs and by handing out leaflets (e.g. <a href="http://web-static.vm.ee/static/failid/112/reisija_meelespea2006.pdf">http://web-static.vm.ee/static/failid/112/reisija_meelespea2006.pdf</a> ).	Yes, the knowledge has also grown lately a lot.
Finland	There is information on EU consular co-operation on the MFA website, but Article 20 is not specifically mentioned. The wording on the website is: "A Finnish citizen is entitled to receiving consular assistance from the mission of another Nordic country or EU member state, if there is no Finnish mission in that country." <a href="http://formin.finland.fi/public/default.aspx?nodeid=36578&amp;contentlan=1&amp;culture=fi-FI#yhteistyö">http://formin.finland.fi/public/default.aspx?nodeid=36578&amp;contentlan=1&amp;culture=fi-FI#yhteistyö</a>	No survey has been conducted on this matter. The MFA, however, estimates that Finnish nationals have better knowledge than the EU average.
Germany	As there are only very few countries without German representation, the information about the right of article 20 is included in all general consular brochures.	German travellers are very well aware of their consular rights in general.
Hungary	First of all, Act XLVI of 2001 on consular protection can be found on the web-site of the Ministry of Foreign Affairs, secondly the authorities have placed information concerning the rights of Hungarian citizens in third states where they do not have a representation on the Ministry's web-site.	Yes, citizens are well informed, Hungarians use the information provided on the web-site, and they get in contact with the

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[http://www.um.dk/da/menu/Borgerservice/Udenrigsministerietskriseberedskab/EUsamarbejdet/?WB\\_CMODE=PresentationUnpublished%2cPresentationUnpublished%2cPresentationUnpubl](http://www.um.dk/da/menu/Borgerservice/Udenrigsministerietskriseberedskab/EUsamarbejdet/?WB_CMODE=PresentationUnpublished%2cPresentationUnpublished%2cPresentationUnpubl)

Country	How do you inform your citizens of their fundamental rights under Article 20 of the Treaty establishing the European Community?	Do you think that your citizens have a good knowledge of their consular and diplomatic rights?
		consular missions abroad if necessary. The websites of the MFA and of our missions are updated regularly and they provide sufficient and useful information and advice for everyone interested.
Malta	Distribution of the European Consular Assistance Brochure compiled by the General Secretariat of the Council of the European Union.	Yes
Lithuania	The transposition of decision 95/553/EC has been published in brochure and placed on the website of the Ministry of Foreign Affairs ( <a href="http://www.urm.lt">www.urm.lt</a> ).	Lithuanian nationals should be better informed about Article 20.
Netherlands	There is information on Article 20 on the web-site of the Ministry of Foreign Affairs: <a href="http://www.minbuza.nl/nl/reizenlanden/faqreis">www.minbuza.nl/nl/reizenlanden/faqreis</a>	No, generally they expect too much assistance of embassies and consulates. Article 20 seems not well known.
Poland	The Ministry of Foreign Affairs in co-operation with the Polish Institute for International Affairs publishes on a yearly basis a compendium of information on the practical aspects of traveling to other countries ""the Polish national abroad." - an extremely useful guide for the Polish nationals who wish to travel to third countries. The book is widely available at the bookshops and in the libraries. Each copy of this year's edition contains the information on the possibility to seek consular assistance from other Member States' representations and the Secretariat General's brochure on the European consular protection (in Polish) as a supplement, thus providing the citizens with the information on the rights under the Article 20 of the Treaty Establishing the European Community. Similar information is available on the website of the Ministry of Foreign Affairs. Moreover the above-mentioned brochure was distributed among the Polish tour operators during the Xli Tourism and Leisure Fair "LATO" which was held from the 20 to the 22of April 2007 in Warsaw.	The information provided via the Internet and in the Ministry's guide as well as distributing the above-mentioned brochure will add significantly to the Polish nationals' knowledge of their rights in the third countries where Poland has no effective consular

Country	How do you inform your citizens of their fundamental rights under Article 20 of the Treaty establishing the European Community?	Do you think that your citizens have a good knowledge of their consular and diplomatic rights?
		representation.
Portugal	The information is available on the website "Portal of the citizen" <a href="https://testes.portaldocidadao.pt/Portal/pt">https://testes.portaldocidadao.pt/Portal/pt</a> and is also provided to Portuguese citizens and EU citizens through leaflet distributed in airports and consular posts in third countries.	Yes
Slovakia	Yes, information on: <a href="http://www.foreign.gov.sk">www.foreign.gov.sk</a>	Yes
Slovenia	<p>The MFA has a web page link where the citizens are informed about this right.  <a href="http://www.mzz.gov.si/si/konzularne_informacije/">http://www.mzz.gov.si/si/konzularne_informacije/</a>  <a href="http://www.mzz.gov.si/en/consular_services/">http://www.mzz.gov.si/en/consular_services/</a></p> <p>The MFA also has a brochure in Slovenian and English published and a web page link to Secretariat where they can find other language version.</p> <p>The MFA cooperated in distributing the brochure to all our Embassies, Consulates and Honorary Consulates and other institutions (tourist board organisation, health insurance companies, administrative units, border crossings etc)</p> <p>The brochure was also published on the Government's sites, for example:  <a href="http://evropa.gov.si/publikacije/">http://evropa.gov.si/publikacije/</a></p> <p>The MFA collaborates with the European Commission in distributing a poster on consular protection.</p>	Medium knowledge
United Kingdom	The document Support for British nationals: a Guide, informs travellers that we assist EU citizens where their country does not have local representation (see the section "Who we can help"). Similar information exists in the summary version of this document distributed with passports and at airports around the UK. The UK also conduct intensive information campaigns to inform citizens of what consular assistance the authorities can and cannot provide, based on the material cited above. These include TV and radio adverts and interviews, media campaigns, partnership marketing with a range of almost 200 partners from the travel industry and elsewhere including Lonely Planet, Sainsbury's and lastminute.com.	British nationals often have very high expectations of what the British consular authorities can do for them in foreign countries

## 9. REPLIES BY MEMBER STATES' REPRESENTATIONS IN THIRD COUNTRIES

Two consulates replied to this questionnaire: the U.K. consulate in Bangkok, Thailand, and the Hungarian consulate in Istanbul, Turkey.

- (1) Number of citizens travelling and living in third countries and scale of problems encountered by citizens in third countries

Country	Number of nationals travelling to the country where your representation is located	Trends since 2000	Number of nationals working and living in the country where your representation is located	Trends since 2000	Number of nationals having encountered problems while travelling to the country where your representation is located	Trends since 2000	Number of nationals having encountered problems while working and living in the country where your representation is located	Trends since 2000
Hungary	2000: 43.000 2003: 58.000 2005: 70.000	Increased	2000: 120 2003 : 140 2005 : 150/200	Increased	2000: 4 2003: 11 2005: 28	increased	Estimated figures: 2-3 per year	Static
United Kingdom	2000:N/A 2003: 550,000 2005: 750,000	It has increased gently: the figure in 2006 was 850,000	2000: N/A 2003: 8500 2005: 40,000		2000:N/A 2003: 2400 2006: 3600		Same as previous question: no separate figures are kept	

**10. NATURE OF PROBLEMS ENCOUNTERED BY CITIZENS WHEN TRAVELLING AND LIVING IN THIRD COUNTRIES**

Country	Most common problems encountered by citizens travelling to third States	Most common problems encountered by citizens working and living in third States
Hungary	Loss of passport and theft	Theft
United Kingdom	Stolen passports, deaths, including road accidents and drink/drug related cases and hospitalisations due to accidents/illnesses.	Stolen passports, deaths, including road accidents and drink/drug related cases and hospitalisations due to accidents/illnesses.

**11. CONSULAR SERVICES PROVIDED TO CITIZENS IN THIRD COUNTRIES AND THE CONSULAR FEES CHARGED FOR SUCH SERVICES**

Country	Help in Emergency Situations	Financial Assistance	Assistance in case of imprisonment of citizens	Assistance in case of death of the citizen abroad	Replacement of a lost or stolen document	Information about evacuation in case of war or other major crisis	Administrative services for citizens living abroad	Other...

Country	Help in Emergency Situations	Financial Assistance	Assistance in case of imprisonment of citizens	Assistance in case of death of the citizen abroad	Replacement of a lost or stolen document	Information about evacuation in case of war or other major crisis	Administrative services for citizens living abroad	Other...
Hungary	<input checked="" type="checkbox"/> (free)	<input checked="" type="checkbox"/> (30 + 30€)	<input checked="" type="checkbox"/> (free or 60€)	<input checked="" type="checkbox"/> (40 + 15€)	<input checked="" type="checkbox"/> (15€)	<input checked="" type="checkbox"/> (free)	<input checked="" type="checkbox"/> (15 to 105€)	
United Kingdom	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <sup>59</sup>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

*Information on the consular fees is found on:*

<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391359>

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<sup>59</sup> But only in very exceptional circumstances and with the agreement of London

ANNEX 4

**Representations of Member States in third countries<sup>60</sup>**

<b>Country according to number of representations</b>	<b>Number of representations in third countries</b>
FR	132
DE	122
UK	115
IT	95
NL	84
ES	78
PL	71
RO	68
CZ	64
BE	61
SE	59
EL	57
AT	56
PT	50
HU	48
FI	47
DK	44
BG	38
SK	32
IE	29
SI	20
CY	17
LT	16
EE	9
LV	9

<sup>60</sup> Secrétariat Général, num. doc 10149/2/06 REV 2 PESC 538 RELEX 386, Représentation diplomatique de la présidence dans les pays tiers

<b>MT</b>	<b>8</b>
<b>LU</b>	<b>7</b>
<b>Total</b>	<b>1,436</b>

Legend

	Between 90 and 169
	Between 60 and 90
	Between 30 and 60
	<30

## ANNEX 5

### Number of citizens travelling and living in third countries

Country	Number of trips made outside the EU in 2005 (Eurostat)*	Percentage of all trips abroad	Number of EU citizens living outside the EU
Austria	2,551,274	31%	
Belgium	1,751,947	19%	
Bulgaria	4,087,974	64%	
Cyprus	245,080	31%	
Czech Republic	1,877,739	27%	
Denmark	1,557,080	29%	
Estonia	131,291	31%	27,000
Finland	1,011,000	17%	85,000
France	9,659,104	43%	778,654
Germany	24,626,901	28%	1,000,000
Greece	711,925	52%	
Hungary	1,615,061	29%	
Ireland	892,000	19%	1,700,000
Italy	5,443,283	34%	1,727,234
Latvia	297,539	35%	
Lithuania	739,950	45%	
Luxembourg	180,000	12%	
Malta			

<b>Country</b>	<b>Number of trips made outside the EU in 2005 (Eurostat)*</b>	<b>Percentage of all trips abroad</b>	<b>Number of EU citizens living outside the EU</b>
Netherlands	2,976,000	21%	700,000
Poland	1,059,000	17%	3,742,000
Portugal			
Romania			
Slovakia	1,002,598	34%	
Slovenia	1,818,103	68%	
Spain	3,294,345	35%	1,500,000
Sweden	550,000	24%	
United Kingdom	12,250,869	26%	11,298,163
<b>TOTAL</b>	<b>80,330,063</b> <b>(Total)</b>	<b>30%</b> <b>(weighted average)</b>	<b>29,776,047</b> <b>(weighted average)</b>

\* Romania and Bulgaria were considered as third countries in 2005.